A BRIEF ENQUIRY INTO THE Ancient CONSTITUTION AND Government of *England*.

As well in respect of the **Administration**, as **Succession** thereof.

Set forth by way of Dialogue, and fitted for Men of Ordinary Learning and Capacities.

By a True Lover of his Country.

LONDON:
Printed for *Richard Baldwin* near the *Oxford-Arms* in *Warwick-Lane.* 1695.

UMI

THE
Publiſher's PREFACE
TO THE
READER.

THERE being many Treatiſes already Publiſh'd upon the Subjects handled in this enſuing Diſcourſe, you may think it needleſs to trouble the World with more of this kind; but thoſe who think ſo, may be of another Opinion when they have conſidered, not only the Deſign of this Treatiſe, which is to Abridge into a ſmall Manual what others have writ in many Volumes; but alſo the manner of handling the Matters herein treated of, which you will find to differ very much from moſt of

the Books written before upon this Subject: ſome Writers having ſcrewed up the King's Prerogative to ſo extravagant a height, as to place the whole Eſſential Frame of the Government in the King's Sole Will and Pleaſure, not conſidering the Fundamental Rights and Liberties of a Free-born Nation, more than as the forced Conceſſions of ſome Weak Princes, not otherwiſe able to appeaſe an Angry People; and which they may therefore contract, or wholy abrogate, as their Power or Opportunities may either dictate, or permit.

Whilſt on the other ſide, there are ſome who have too much debaſed the Royal Prerogative, by placing all Power immediately in the People, and ſuppoſing the King accountable to their Repreſentatives for every ſmall Miſcarriage in Government. There is without doubt an Error in both theſe Extremes; ſince as the King can have no Prerogative which is inconſiſtent with the Ancient Rights and Liberties of the Subject, ſet down in Magna Charta, *and other Ancient Statutes, which were*

only

only declarative of the Common Law of England; *So likewiſe, if the King be the Supreme Magiſtrate of the Nation, he cannot without a Soleciſm in Government, be rendred accountable to any Power ſuperior to his own; theſe things conſidered, hath induced the Author to chuſe a middle, and more moderate Courſe, by preſerving to the King all ſuch Prerogatives as are inſeparable from the Supreme Executive Power, and which are neceſſary for the Common Safety; yet, without leaving the King abſolutely irreſiſtible in all Caſes whatſoever, and without a ſuppoſed impoſſibility of his falling from his Royal Dignity, in caſe of the higheſt Breaches of his Coronation Oath, and the utmoſt Violations of that* Uſual and Ancient Contract, *which his Predeceſſors have ſo often renewed with the People of this Nation, upon their Succeſſion to the Throne.*

For the proving of which the Author hath made uſe of the beſt Authorities he could collect either from our ancient Hiſtories, Records, or Law-

Books, beginning with the Grounds and Institution of Civil Government in general, and ending with that of England *in particular. And though he hath so far adapted this Discourse for men of ordinary Learning and Capacities, as not to stuff the Margin with many Quotations; yet he hath not fail'd to put them down, where-ever the Niceness or Uncommonness of the Subject might otherwise chance to shock the Understandings of Readers not thoroughly vers'd in things of this Nature: Not but that the Author is very well satisfied, that even where no Authorities are expresly cited, he is able to maintain what he there lays down by Arguments drawn from Law, as well as Reason, if any man shall think it worth while to call it in question; but if he requires larger and fuller Proofs on this Subject, he may, if he pleases, first consult the last Eight Dialogues of a late Treatise, called,* Bibliotheca Politica; *as also Mr.* Atwood's *Learned Treatise* concerning the Antiquity and Justice of an Oath of Abjuration. *And I hope*

hope he may thence receive ſufficient ſatisfaction, that the Principles here laid down, are founded not only upon right Reaſon, but the ancient Conſtitution of the Engliſh *Government.*

This may ſuffice for the manner of handling this Argument. But now to ſay ſomewhat more of the ends of publiſhing this Diſcourſe, and they are theſe: Firſt, to make every man (though of never ſo common a Capacity) underſtand (as well as the Author is able to perform it) what is the true, ancient, and legal Government of this Kingdom. 2dly, What are the main and moſt conſiderable Prerogatives of the Crown. And laſtly, What are the fundamental Rights and Liberties of the People. And that theſe are ſo far from being contradictory or inconſiſtent, that they rather ſerve to defend and ſtrengthen each other; ſo that it hath been for the defence and preſervation of all theſe, that this wonderful and happy Revolution hath been brought about, and Their Preſent Majeſties placed upon the Throne; as alſo to con-

vince those who traduce by the Nicknames of Whigs, *and* Commonwealths-men, *those that have been in the worst of times the only true Assertors of this ancient limited Monarchy; so that if they plead for Resistance in some Cases, it is only in those of utmost and absolute necessity, and in order to preserve the Original Constitution, and to prevent the Head of the Legislative Power from devouring the Body: nor can they have any other Notions of Loyalty, but their Obedience to the Government establisht, and exercised according to Law, as the ancient Sense, as well as Etymology of that word imports.*

To conclude, Whosoever shall think fit to bestow a little money to buy, and time to peruse this small Treatise, the Publisher hopes he will find the design to be truly English, *that is, sincere and honest, that all good Subjects may know* how to render to *Cæsar* the things that are *Cæsars*, and to God the things that are Gods, *without blindly sacrificing (under the will-worship*

of

of a pretended Loyalty) the Religion, Civil Liberties and Properties of their Country to Cæsar's *Will, as some of late Years have done, who made these the darling (because most gainful) Doctrines as well of the Pulpit, as the Bar and the Press.*

A Brief

A

BRIEF ENQUIRY

INTO THE

Ancient Conſtitution and Government of *England*, &c.

In a Dialogue between a Juſtice of Peace, *and an Underſtanding* Freeholder.

J. GOOD Morrow Neighbour; What brings you hither ſo early? If you want a Warrant, I'll call my Clerk, and then hear your Buſineſs.

F. No, I aſſure your Worſhip, the Buſineſs I come about is of greater concern, and that no leſs than the Rights and Liberties of the Subject, as well as the Power and Prerogative of our Kings; which though I heard you Treat of in your late Charge to the Grand Jury laſt Quarter-Seſſions, yet ſince I could not come near enough to hear it diſtinctly, not being of that

that Jury my ſelf, pray give me the ſubſtance of that Diſcourſe; and I the rather deſire it, becauſe I have ſince heard it much cenſured by ſome of our Neighbours as favouring of Commonwealth Principles: But to ſave you the labour of a needleſs repetition, I will ask you thoſe Queſtions which I deſire moſt to be ſatisfied in.

J. Pray uſe your diſcretion, and begin when you pleaſe; I will do my endeavour to ſatisfie you as well as I can, though without putting my ſelf to the trouble of quoting many Authors, which perhaps you never heard of; and therefore pray believe, that whatever I ſhall tell you, I have not only Reaſon, but Authorities alſo for what I then ſaid.

F. I have no cauſe to doubt what you ſay; therefore, pray Sir, in the firſt place tell me, what you then ſaid about the Natural ſtate of Mankind as to Civil Liberty: Pray Sir, what think you, Were men at firſt Born Subjects, or did they become ſo by ſome Human means?

J. As to this, *Adam* (for example) being the Firſt man, could not, as a Husband to *Eve*, or as a a Father to *Cain*, *Abel*, and the reſt of his Children, be an Abſolute Lord or Monarch over them: His Power, as that of all other Fathers of Families, not being a Civil Power, but that of a Husband, or Father, only for the direction of his

Wife

Wife in all things relating to the affairs of the Family; and over his Children in order to their good Education in the Fear of God, and for their Maintenance whilſt they continued Members of it; ſo that Subjection to Government could never begin from mens being born Servants, or Subjects, as ſome will have it.

F. Pray then tell me, Sir, what is Civil Government?

J. I think Civil Government is God's Ordinance, which he has ordained for the Good and Happineſs of Mankind, to preſerve men from the Violence both of Foreign and Domeſtick Enemies, ſince the nature of man depraved by the Fall of *Adam* is too apt otherwiſe to fall into all manner of miſchiefs and enormities, as well towards himſelf as others.

F. How then did it begin? Was it by any Divine Precept, or elſe by the Conſent of many men who had found the Inconveniencies of living without it?

J. Before the Flood there is no mention in Scripture of any ſort of Civil Government, or any Precept left for it; the firſt that ſeems to preſcribe it, being after the Flood, when God gave *Noah* that poſitive Precept, *Gen.* 9. 6. *That whoſo ſheddeth man's blood, by man ſhall his blood be ſhed*; whence Divines argue a neceſſity of Magiſtrates for putting this Law in execution; but who

were

were to appoint them, the Scripture is wholly silent; and though indeed there is mention made of Kings in *Genesis* very early in the world, yet is it not there told us how those Kings were made; therefore it is most reasonable to suppose, that they either at first began by the tacit Consent or Election of the Masters of Families, and other Freemen of the same Lineage, or Nation; or else by Conquest of other Nations by force of Arms.

F. But, pray Sir, is there not an account given us in Scripture of Judges and Kings made by God's own Appointment among the *Jews*?

J. Yes; but that concerned no other Nation but them; who are the only People, that I know of, that had a Civil Government, as well as Divine Law, from God's own Appointment.

F. But, Sir, did not God's thus giving the *Jews* Kings, or Persons at least endued with Kingly Power, (though not under that Title) render Monarchy to be of Divine Right, so as that all other Nations are thereby obliged to have no other Government but that?

J. No sure, not at all; for till the time of *Saul* they had no visible King over them; God himself was their King, and those that Governed under him could do nothing of moment without his express Command;

and

and where that did not interpoſe, the Government was by *Moſes* and a Senate of Seventy Elders, and alſo by the Heads or Princes of the ſeveral Tribes as Subordinate to them; and after his Deceaſe, by *Joſhua* and the other Judges whom God raiſed up; who if they had been Kings in Power, but not in Title, it would have been in vain for the *Iſraelites* to have deſired a King to be like other Nations; and you ſee when they deſired ſuch a King, God was angry with them, as if they had rejected himſelf; ſo that there is no other conſequence to be drawn from all theſe Examples, but that Kingly Government is the moſt Antient, and may alſo be the beſt, if kept within due limits.

F. Pray whence then do Kings now-a-days derive their Power, (ſince God hath long ſince left off making any Kings by Divine Precept)? Whether is it from God, or from the People?

J. I told you before, that all Power is from God, and conſequently Kingly Power muſt be ſo too; yet this is ſo to be underſtood, that this Power cannot Rightfully be acquired without the People's Conſent; I mean all thoſe who being Maſter's of Families, and Free-men at their own diſpoſe, had at firſt a Power of ſetting up what ſort of Government they pleaſed; and hence it is that we find ſo many ſorts of Governments

ments in the world; as for example, Monarchy, which is either Absolute, as in *France* and *Turkey*; or Limited, as in *England*, and as it was not long since in all the *Northern* Kingdoms of *Europe*; or else Aristocracy, that is, the Government of the best sort, or Nobility; or else Democracy, where the Common People Govern alone, or else have the predominant Power. But all these, as they derive their Power from God, are alike ordained by him; though in respect also of men, who first found out and instituted these several Governments, they are also called by St. *Peter*, *the ordinance of men*, or *a human creature*, as the Original words it.

F. But do we not also find in Scripture, that most of the great Kingdoms or Monarchies of the world have begun from Conquest? Does not therefore Conquest of a Nation by Arms give the Conqueror a Power from God to Rule over that People without their Consents?

J. I will not dispute what Authority the *Babylonian*, *Persian*, *Macedonian*, and *Roman* Monarchies might have over those Nations they conquered, by a particular Donation from God, who had long before foretold those Monarchies by *Daniel*, and the other Prophets; and as for the first of these Empires, the *Jews* are particularly Commanded by the Prophet *Jeremiah*, to serve the

King

King of *Babylon*; the like is foretold by *Isaiah* of *Cyrus*; yet for all this, I think no other Conquerors can pretend to the like Right over any Nation at this day; since all Conquest is either by a just, or an unjust War; that the latter can give no right at all to the Conqueror, all Writers agree; and that even the former can give no right without the Peoples consent, either tacit or expreſt, seems also as certain, since in respect of them who are not capable Judges of the right or wrong of the Quarrel, it can lay no obligation of Obedience, farther than they pleaſe by some act of their own to acknowledge the Conqueror for their Lawful Prince; which being once done voluntarily, is all one in respect of themselves, as if it were by their Election, or that of their lawful Representatives. Nor could the first Conqueror (mighty *Nimrod*, for example) ever conquer the neighbouring Nations by the sole assistance of his own Children and Servants, without the conjunction of other Fathers of Families, and Freemen, who 'tis most likely followed him for a share of the Spoil, and upon certain Conditions agreed upon between them; for the like we find of all other Conquerors in Ancient as well as Modern Histories.

F. But pray shew me, Sir, how this can be, since most Nations have been conquer'd at some time or other; but few of them have

have given their Consents (as I know of) either in a whole Assembly of all that Nation, or else by their lawful Representatives, as we do in *England*.

J. 'Tis true, they have not given their Consents all at once, but singly, and one by one, they have done, and constantly do it every day in Towns and Countries that pass from one King to another by Conquest; for it is certain that all such Subjects as do not like the Religion or Government of the Conquering Prince or Commonwealth, may lawfully retire out of the conquer'd City or Countrey, and carry their Estates with them, or else sell their Lands, and carry away the Money if they can, without any crime; so that it is apparent it is only from the Acknowledgment or Recognition of each particular Person who stays there, that this Conqueror comes to have any Right to the Subjects Allegiance.

F. Pray how is this Consent or Acknowledgment given, since Oaths of Allegiance (as I am inform'd) are not exacted in all places of the world where Conquests are made?

J. I grant it; but where they are not so imposed nor taken, the persons that have not sworn to this new Government, can never be oblig'd to an Active Obedience, or to fight for, or serve the Conquering Prince, against perhaps their former lawful Sovereign;

reign; yet I think thus much I may justly maintain, That whatever Prince, be he a Conqueror, or Usurper (who is much the same thing in respect of the Subjects) who shall take upon him to administer the Civil Government, by protecting the conquer'd people, punishing Malefactors, and doing equal Justice by himself or his Judges between man and man; whosoever of this conquer'd people will continue in that City or Countrey, and receive his Protection, and enjoy all the other Rights of other Subjects, is so far obliged by virtue of that Protection he receives, as to yield a Passive Submission to all the Laws that such a Conqueror shall make, and not to conspire against, or disturb his Government by Plots or Rebellions. But indeed this tacit Consent or Acknowledgment of the Conqueror's Authority, because not given by the People at once, makes many men believe that their Consent is not at all necessary to make a Conqueror's Power obligatory as to them; not but that I do acknowledge that Oaths of Allegiance are of great use in any Kingdom or Commonwealth, to bind men to a stricter Observance of their Duty, and also to an Active Obedience to all their Conqueror's lawful Commands, even to venturing their Lives for the Government, since it is for the Publick Good of the Community, if they are so required.

F. I am well enough satisfied as to the Original of Government, and the Rights that all Kings and Commonwealths have to their Subjects Allegiance, whether they began at first by the express Consent or Election of the People, or else by Conquest and their subsequent Consents; but pray satisfy me in the next place concerning the Government of *England*; you said it was a Limited Monarchy, and I have never heard that questioned; but how did this Limitation begin? whether from the very first Institution of the Government, or else by the gracious Concessions of our Kings?

J. Without doubt, Neighbour, from the very Institution of the Government; for our first *English Saxon* Kings were made so by Election of the People, in their great Councils, or Parliaments (as we now call them) and could do nothing considerable either as to Peace or War without its Consent; and this Council was to meet of course once a year, without any Summons from the King, and oftner by his Summons, if there was any occasion for it; and it is certain that the Freemen of *England* have always from beyond all times of memory enjoyed the same Fundamental Rights and Privileges (I mean in substance) that they do at this day.

F. Pray, Sir, what are those Fundamental Rights and Privileges that you say we have

have ſo long enjoy'd; tell me what they are.

J. I will in as few words as I can: Firſt then, The Freemen of *England* were never bound to obſerve any Laws, either in matters Civil or Religious, but what were made by the King, with the Conſent of the Great Council, conſiſting of the Clergy, Nobility, and Commons, aſſembled in Parliament.

Secondly, That no Taxes could be lawfully impoſed upon the Nation, or any man's Property taken away without the Conſent of this Council. 3. That this Great Council had ever a power of hearing and redreſſing all Grievances and Complaints of the Subjects, not only againſt the * Oppreſſions of any of the King's great Officers or Miniſters, 'who were too great to be called 'to an account in any other Court; but alſo 'the particular Wrongs of the King himſelf, 'the Queen, or their Children.

F. Pray how could this be done, ſince the King may at this day diſſolve the Parliament whenever he pleaſes?

J. I grant it is ſo now; but certainly it was otherwiſe when Parliaments met of courſe at a certain place once a year without any ſummons from the King; yet after that time, I find it in the Ancient Treatiſe, called

* Vid. *Mirror of Juſtice*, Cap. 1. Sect. 2.

the

The Manner of holding Parliaments: † 'That the 'Parliament ought not to be diſſolved whilſt 'any Petition or Bill dependeth undiſcuſſed, 'or at leaſt whereto no determinate Anſwer 'is given; and that if he do, or permit the 'contrary, *perjurus eſt*, i. e. he is perjur'd: And even at this day the Two Houſes may juſtly refuſe the King any ſupply of Money, whilſt he refuſe to redreſs their juſt Grievances.

F. This is more than I ever heard of before; but pray proceed to tell me, what are the reſt of the Liberties and Priviledges of an *Engliſhman*?

J. In ſhort, they are theſe; Not to be baniſht the Realm, or impriſoned, without juſt cauſe; nor to be kept there only as a puniſhment, but in order to a legal Trial; not to be tried, condemned, or executed, without a lawful Jury of his Peers firſt paſſed upon him, (unleſs in time of War, by Martial-Law); laſtly, no man is oblig'd to quarter Soldiers without his own conſent, and then paying for what they have. There are other leſs Rights and Priviledges, expreſt in the Petition of Right, acknowledged and confirmed in Parliament by King *Charles* I. all which I omit; but theſe being the chiefeſt that concern our Lives, Liberties and Eſtates, were only inſiſted upon in my ſaid Charge.

† Vid. *Modum Antiq. tenendi Parl.*

F. But

F. But pray, Sir, tell me, as to the King, Is he not the ſole Supream Power in *England?*

J. No certainly; for then he could make Laws, and raiſe Money without the Peoples Conſent; but every printed Act of Parliament will ſhew you where the Supream Power reſides, wherein it is expreſly recited in theſe words, *Be it therefore enacted by the King's moſt Excellent Majeſty, and by and with the Advice and Conſent of the Lords Spiritual and Temporal, and the Commons of this Realm, and the Authority of the ſame*; or as I can ſhew you in ſeveral Statutes of King *Henry* the VIII*th.* wherein it is recited thus, *Be it enacted by the Aſſent and Conſent of our Sovereign Lord the King, and the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by Authority of the ſame*; whereby you may ſee, that not only the words *Aſſent* and *Conſent*, but the word *Authority* is referred, as well to all the Three Eſtates, as to the King.

F. This, I confeſs, is plain enough, but what are the King's chief Prerogatives.

J. I will tell you in as few words as I can; his Majesty's chief Prerogatives (for to enumerate them all would be endless) are these, First, to call Parliaments once a year, or oftner, and Dissolve them if he pleases; to give the last hand, or sanction to all Laws for raising of Taxes, and for the enacting all other things that his Majesty, joining with the Two Houses of Parliament, shall think fit to be Enacted; to appoint Judges to Try, Condemn, and Execute Traytors, and all other Malefactors for Treason and other Crimes; and to grant Pardons for those Crimes, if his Majesty shall think fit (yet still according to his Coronation Oath); to grant Commissions to all other Magistrates and Officers, both Civil and Military, no Arms being regularly to be Rais'd but by his Authority; also by the Advice of his Privy-Council, to issue Proclamations according to Law, and for the Publick Good for enforcing the observation of such Laws, as shall be thought fit, in case those that are entrusted with the execution of them prove too remiss: Lastly, to make War and Peace, though the latter, as well as the former of these, were anciently very seldom made without the Advice and Consent of Parliament. These are the chief Prerogatives which I mentioned in my Charge,

Charge, tho' I grant there are divers others, tho' leſs material.

F. But, pray Sir, cannot the King by his Prerogative do ſome things againſt the Laws, and Diſpence with them in all caſes which he himſelf may judge for the Common Good of the Kingdom?

J. The King had anciently no Power to Diſpence with Statutes, with *non Obſtantes*; and ſo it is ſolemnly declared in the Kings Bench in the 39th. of K. *Edward* the 3d.* by all the Juſtices as a Rule in Law, well known at that time, and I could tell you (were it not too tedious) how this Prerogative of Diſpenſations firſt began; but even then the King could not Diſpence with any thing that was morally Evil in it ſelf, or with what was Enacted by Authority of Parliament for the common Good and Safety of the whole People, or Nation in General: And this is the true reaſon why the Late King *James* could not Diſpence with all Statutes concerning the taking away the Teſt, becauſe the whole Nation had an Intereſt in them; nor could he Diſpence with any Act which conferred a particular Right

* Vid. *the year-book, Ter. Paſch.*

or Priviledge on a third Perſon; and laſtly, he could not commonly Diſpence with any Statute wherein there was a particular proviſion to prevent the King from Granting Charters with Clauſes of *Non-obſtantes*; But now all Diſpenſations with ſuch Statutes, are taken away by a particular Clauſe in the late Act of the Rights and Liberties of the Subject † which you may ſee if you pleaſe; and which I take to be no more than a Solemn Declaration of what was the Ancient Law of *England*, before *non obſtantes* came up.

F. I am very well ſatisfied in this; but, pray Sir, tell me the reaſon, Why the King cannot, as the Supreme Executive Power of the Kingdom, exerciſe his Royal Prerogative, though it were to the prejudice of ſome particular Perſons?

J. I can give you a very good reaſon for this, becauſe this would be contrary to that Truſt which was at firſt repoſed in the King by the Repreſentative Body of the Nation when this Limited Monarchy was firſt inſtituted, and which that ancient Treatiſe, called the *Mirror of Juſtices*, * writ above

† Vid. 1° Will. & Mar.
* Chap. 1. Sect. 2.

Fou

Four hundred years ſince, very well ſets forth the Common Law of *England* as it ſtood before the Conqueſt, as alſo the Original of the Government of this Kingdom by one Perſon, or Monarch; which he thus recites, 'That when Forty Princes (that 'is, Aldermen, or Earls of Counties) did 'Elect one King (*viz. Egbert*) to Reign 'over them, to Maintain and Defend their 'Perſons and Goods in Peace by Rules of 'Right; they made him at firſt to Swear, 'That he would maintain with all his 'Power, the true Chriſtian Faith, and 'would Govern his People by Right with-'out any reſpect of Perſons; and would 'alſo be Obedient to ſuffer Right (*i. e.* Ju-'ſtice) as well as others of his People. By which it appears, That all the Prerogatives of the Crown are truſted in the King by Law, for the Good and Preſervation of his People, and not for the exerciſe of an Arbitrary Will, or Power contrary thereunto. As alſo Sir *John Forteſcue*, once Lord Chancellor to King *Henry* the VIth. in his Treatiſe in Praiſe of our *Engliſh* Laws, has thus handſomely ſet forth, *viz.* 'That the 'King was Made, or Elected, for the ſafe-'guard of the Law, the Bodies and Goods 'of his Subjects; and he hath this Power 'derived from the People; ſo that he can-'not long Govern them by any other

'Power; and he alſo gives us the reaſon why he cannot regularly Diſpence with Acts of Parliament; 'Becauſe, ſays he, 'they are made by the general Conſent of 'the King, and the whole Realm; and if 'there be any thing in them that proves 'inconvenient, the King may quickly, or 'in a ſhort time, call another Parliament 'to amend it; but not without that, as it certainly would if the King had an Abſolute and Unlimited Power of Diſpenſing with all Laws. So that you ſee the King is entruſted with his Prerogative by Law (that is, by the Conſent of the People only for their Benefit and Preſervation); therefore if the Judges, or any other inferior Officer act contrary thereunto, though by the King's expreſs Letters, or Meſſages, they are Forſworn, and may be puniſhed for it; and in this ſence it is, that the King, whilſt acting thus by his ſubordinate Officers or Miniſters, is ſaid to do no wrong, becauſe they are liable to be queſtioned for it; and if he acts otherwiſe by his own perſonal Power, or Commands, it is not as King of *England*, but as a private Perſon; ſo that if we will conſider our own happineſs, we *Engliſhmen* are bleſt with ſuch noble Priviledges and Liberties, that I think there is no Nation in the world where all degrees and ranks of men may live more happily than

than we do: And as for the King, though it is true he hath not an Absolute Unlimited Power of doing whatever he will, yet he hath sufficient to Protect his Subjects, and bountifully to Reward those that serve him faithfully; and whenever he undertakes any Foreign War with the general Consent and Assistance of his People in Parliament, he most commonly proves a Terror to those who dare oppose him.

F. I am very sensible of this Happiness we enjoy; and therefore when I think how miserably the poor Country-men live in *France* and other Countries, we of the Yeomanry have all the reason in the world to venture our lives in the defence of our Ancient Constitution; since if ever we should be reduced to an Arbitrary Government, either by a standing Army at home, or a Conquest from abroad, we can expect no better than Wooden-Shoes and Canvas-Breeches, and to drink nothing but Water with the miserable *French* Peasants; and, I doubt, if things should once come to that pass, you Country-Gentlemen would be but in little better condition.

But since the greatest part of your Charge was to justifie the Right of their present Majesties to the Throne, and that you insist-

ed pretty long upon that Head; yet methoughts you were a little too ſhort in telling us only that King *James* (who was once our Lawful King) could ceaſe to be ſo; for you ſeem to reſt contented with the bare words of the Convention's late Vote, *viz.* 'That King *James* having endeavoured to ſubvert the Conſtitution of 'the Kingdom, by breaking the original 'Contract between the King and the 'People, and that having violated the Fundamental Laws by withdrawing himſelf 'out of the Kingdom, he had Abdicated 'the Government, and that the Throne was 'thereby become Vacant. So that tho you ſpeak pretty largely of King *James*'s Violations by Raiſing of Money without Conſent of Parliament, and of exerciſing his Diſpenſing Power; yet methoughts you ſeem chiefly to place this Vacancy of the Throne upon King *James*'s Abdication, or Deſertion of it; which, let me tell you, as plain a Country Fellow as I am, will not down with me; for I can never believe the King would have deſerted the Government, if he thought he could have ſtaid here with ſafety; therefore, pray tell me your meaning of theſe hard words, *Conſtitution of the Kingdom*, *Original Contract*, and *Abdication of the Throne*.

J. I was not willing to insist too long in the face of the Country upon these nice Points, which were not proper to be handled before an Assembly of ordinary Countrymen; but since you have always appeared to me to be above the ordinary Capacity of those of your Rank, I will tell you what I conceive was the true Sense of the Convention in every one of those expressions: first for the Constitution of the Kingdom, which King *James* went about to violate, I take that to be the Government by King, Lords and Commons in Parliament, which he endeavour'd to violate, by his taking away of Charters from Corporations, and doing his utmost to impose a Parliament upon the Nation, of such men as would not only take off the Penal Laws from Papists, and all other Dissenters, but who would also have confirmed to the King that Arbitrary Power of dispensing with what Laws he pleased; which would indeed have render'd Parliaments wholely useless, and was as good as putting the whole Legislative Power into the sole Person of the King.

F. But the Original Contract puzzles us yet more than all the rest, and I heard *Parson-Slaverall*, at a neighbouring Gentleman's

house the other day, ask, Whether the Speaker of the Convention had not the keeping of it under his Cushion? for he could never yet light upon it in any *English* History or Law-Book.

J. Pray tell that witty *Parson* next time you meet him, that if he pleases to look over our Histories and Law-Books, that in the very same Leaf where the Divine Hereditary Right of Succession to the Crown in a Right Line is established as an unalterable and fundamental Law, in the very next Clause he may find this Original Contract. But not to banter you, I will tell you my sense of this expression, which, in my opinion, signifies no more than that Compact or Bargain which was first entred into between King *James*'s Ancestors or Predecessors, (and under whose Title he enjoy'd the Crown) whereby they bound themselves by a solemn Oath, when they took the Crown upon them, at their Coronation, to keep and maintain the Laws of the Realm, and to govern the People according to these Rules of Justice and Mercy, that is in short, acting according to Law. Which Oath, or the substance of it, having been constantly renewed every fresh Succession to the Crown, as soon as the King was capable of taking it, sufficiently declares, that as the King

King upon observing this Compact, by governing according to Law, had a Right to his Subjects Allegiance; so if he refused to act according to it, but would wilfully violate the Ancient Constitution of the Kingdom, he thereby ceases to be King by Law, and by destroying his own Title to the Crown, thereby also dissolves that Bond of Allegiance which before bound his Subjects to him as well in Duty as Affection.

F. But how can you prove that this Contract was mutual, or that the King was to enjoy his Crown only upon this Condition, That he observe the Fundamental Laws of the Kingdom? since I have heard it positively asserted by those that are very well skilled in our Laws, that the King is as much King before ever he is crowned, as afterwards; and that he may chuse whether he will ever take any Coronation Oath or not.

J. I will not now dispute that Point with you; but yet let me tell you, if a King should at this day refuse to be crowned, because he had no mind to be tied by his Coronation Oath, I doubt whether the People, if they understood the force of that Oath his Predecessors have

have all along taken for ſo many Succeſſions, might not as well refuſe to take him for their King, ſince he refuſed to hold the Crown upon thoſe Conditions that his Anceſtors at firſt took it; and ſo might look upon themſelves as good as diſcharged of all Oaths of Fidelity to him, ſince thoſe Oaths were no doubt at firſt inſtituted on this mutual Conſideration, that both ſhould obſerve their part, and not that one ſide ſhould be looſe, and the other faſt; but to ſhew you in the firſt place, that every Coronation Oath was in the *Saxon* times, and long after the Conqueſt, a Renewal of this Original Contract may appear from theſe Conſiderations:

1. That all the Kings of the *Weſt Saxons* were elected, or at leaſt confirmed by the great Council or Parliament *; and I can ſhew you a particular Law of a General Synod or Parliament of all *England*, wherein is particularly ſet down the Laws or Rules for the electing of their Kings, as that they were not to be Baſtards, *&c.* And purſuant to this Law of electing their Kings, this great Council † often preferred the Younger Brother before the Elder, or the

* Vid. *Spel. Concil.* 1 *Vol. p.* 29.
† Vid. *Vitam Alfredi. Edit. Oxon.*

Uncle

Uncle before the Nephew, when either greater Merit, or the preſſing Neceſſities of the Kingdom required it, which when once agreed upon by the Biſhops, and great men of the Kingdom in the great Council, after their Election, and upon the day of their Coronation, the Archbiſhop of *Canterbury* (whoſe Right it has always been to crown the King) went to the King Elect, and before ever he proceeded to the Coronation, tender'd him a ſolemn Oath *, whereby he was to ſwear three things:

Firſt, That God's Church, and all the Chriſtian People of his Kingdom ſhould enjoy true Peace and Quiet.

Secondly, That he ſhould forbid Rapine, and all Injuſtice to all ſorts of men.

Thirdly, That he would command Juſtice together with Mercy in all Judgments: And then (and not till then) was the Crown ſet upon his Head, and the Scepter put into his Hand by the Archbiſhop; and till this was done, the Prince Elect was not looked upon as King, nor had any Right to the Subjects Allegiance. And thus ſtood this

---

* *See the Old Form of the Coronation Oath before the Conqueſt, and after, in Mr.* Attwood's *Treatiſe of the Antiquity of an Oath of Abjuration, p. 94. to the end.*

imme-

immemorial Custom unaltered, not only during the *Saxon* times, but long after the coming in of the *Normans*; for the first seven Kings after *William* I. who till their Coronations were never owned nor stiled Kings until King *Edward* I. who was Elected (or Recognized) for King, in a great Convention of the Estates, who then assembled of their own Accord, when he was in the Holy Land, and they caused an Oath of Fealty to be taken to him two Years before his arrival in *England*; and though I grant since that time the Crown hath been claimed as Hereditary, yet has it rather been by vertue of those Entails that have been successively made of it by expres Acts of Parliament, and not from any Fundamental Law or Constitution of the Kingdom. This was the ancient Form of electing and making our Kings, the Footsteps of which Election still remain to later times, when the Archbishop used to lead the King or Queen to all parts of the Scaffold, as at the several Coronations of King *Edward* VI. and Queen *Elizabeth* *: asked all the People standing below, Whether they would have this Person to be their King or Queen?

---

* *See the Forms of those Coronations in* Stow, Holinshed. *and others.*

F. I confeſs you tell me more of this matter than ever I knew before; but yet I am ſtill to ſeek, how this old Coronation Oath, expreſt in ſo few words, ſhould tie thoſe Princes to obſerve the Laws of the Kingdom, ſince it ſeems that by this Oath, he was rather to govern according to Equity, than Law.

J. That is, becauſe you do not underſtand the Legal Force of thoſe words contained in this Oath; for by the firſt Branch of it, whereby God's Church, and all Chriſtian People ſhould enjoy true Quiet, is meant not only that the Clergy in particular ſhould under him enjoy all their lawful Rights and Priviledges, but alſo all the other Lay-Members of Chriſt's Church ſhould enjoy the free Profeſſion of the Chriſtian Religion as by Law eſtabliſht, without any moleſtation or diſturbance.

2. By forbidding Rapine and all Injuſtice, is meant not only his hindring Robberies, and all violent takings of his Subjects Goods, but alſo the illegal taking them by his own perſonal Commands, or by his inferior Officers or Miniſters.

3. By commanding Juſtice together with Mercy in all his Judgments, is meant no more, than his not pardoning the Guilty when

when condemned, and also not to condemn the Innocent, or such whose particular Circumstances might deserve Mercy, and is no more than what was afterwards granted by *Magna Charta*, the sense of which is, 'That 'the King there promises neither to deny 'nor defer, nor yet to sell Justice to any 'man; which extends likewise as well to his great Officers and Judges, as himself, since they being the Keepers of the King's Oath and Conscience, he is guilty of the like Perjury, if he either connive, or is a wilful Partaker or Encourager of their Injustice. And it was also declared for Law by the Judges, in the Reign of King *Edward* III. That not only the King, but the Prelates, Nobles, Governors, and Justices, *&c.* of this Realm, were tied by their Oaths to maintain the ancient Laws, Franchises and Customs of the Kingdom of *England*. And also in a Letter sent from the Parliament in the 29*th* of *Edward* I. to the Pope*, the States of the Kingdom do there declare, 'That since the Premises required by 'the Pope, were to the disherison of the 'Crown, and subversion of the Kingdom, 'and to the prejudice of the Liberties,

* Vid. *Mat. West. p. A. D.* 1301. 435. 436.

'Customs

'Cuſtoms and Laws of their Country, and to 'whoſe obſervance and defence they were 'bound by the Oaths they had taken, and 'which they would defend to the utmoſt 'of their power; nor would permit even 'the King himſelf, although he would do 'it, to attempt the ſame. Now pray tell me what greater Aſſertion of a right of Reſiſtance in ſome Caſes, than this Letter from the Parliament, ſent by the King's own privity and conſent.

F. But you have not yet ſhewn me how the King, who is an Hereditary Monarch at this day, can be tied by the Oath of his Predeceſſors, ſince (as your ſelf cannot deny) he is King before ever he is Crowned.

J. I will not deny, but the Law is taken to be ſo at this day; yet it is alſo as true, that from the beginning it was not ſo, as I have here ſufficiently made out; and yet for all this, I can prove, that tho the Succeſſion to the Crown is now become Hereditary, and ſo may alter the manner of acquiring it, (and this for the avoiding of Conteſts between Competitors at Elections) yet notwithſtanding this Hereditary Succeſſion, it does no ways alter the Conditions on which the Crown was at firſt conferred, any more than if the Office

Office of Lord High-Conſtable, or Earl-Marſhal of *England*, having been at firſt granted for Life, and being afterwards by ſubſequent Grants made Hereditary, thoſe that thus enjoyed them ſhould have pretended that they were now no longer forfeitable for any Male-adminiſtration, tho never ſo enormous. Now, let us but apply the Caſe of thoſe great Offices of Truſt to that of Kingſhip, which is certainly an Office of the higheſt Truſt, and then we may eaſily diſcover, that whether it be for life, or elſe entail'd to them, and their Heirs, they are ſtill obliged by the firſt Contract of their Anceſtors, which is for memory ſake ſtill renewed at every King's Reign; ſo that tho the manner of their Acceſſion to the Crown be alter'd from what it was at firſt, yet the Conditions on which it was firſt taken, remain the ſame as long as the Oath it ſelf continues; ſo being renewed at every King's Reign. And hence it is, that our Kings enjoy their Crowns, be it for Life or In-tail. Now it is certain, that this Solemn Oath or Contract which was taken by the firſt King, ought by Law to be renewed at the beginning of every King's Reign; and hence it is, that our Kings are not only bound by their own expreſs Oaths or Contracts with their Subjects, but alſo by the implied Oaths or Compacts of their

their Predeceſſors under whoſe Title they claim.

And King *James* I. was ſo ſenſible of this double Contract, that he expreſly mentions it in one of his Speeches to both Houſes of Parliament, where he very well diſtinguiſhes between both thoſe Contracts, telling them, 'That a 'King in a ſetled Kingdom binds himſelf 'by a double Oath to the Obſervation of 'the Fundamental Laws of his Kingdom, '*tacitly* as being a King [that is claiming 'under his Anceſtors] and ſo bound to 'protect them as well as the Laws of his 'Kingdom; and *expreſly* by his own Oath 'at his Coronation: So as every Juſt King 'in a ſetled Kingdom is bound to obſerve 'that Paction or Covenant made to his Peo-'ple by his Laws, in forming his Govern-'ment agreable thereunto, according to 'that Paction which God made to *Noah*, *&c.* 'And then goes on to tell them, That 'therefore a King governing in a ſetled 'Kingdom, leaves to be a King, and de-'generates into a Tyrant as ſoon as he 'leaves off to Rule according to his Laws. And then concludes, 'That all Kings who 'are not Tyrants, nor Perjured, will be glad 'to bind themſelves within the limits of their 'Laws; and they that perſwade them o-'therwiſe, are the worſt Vipers and Peſts 1609.

both

'both againſt them, and the Commonwealth.

So that you ſee here by King *James*'s own Conceſſion, that there are not only Fundamental Laws, but an Original Contract (which he there calls a Paction or Covenant) to obſerve them from the time of the firſt King or Monarch to this day, and that when he ceaſes to Govern according to this Compact (which he here calls his Laws) he then becomes a Tyrant.

F. But I have heard ſome ſay, That *William* the Firſt, after he had conquered *England*, diſtributed almoſt all the Lands to his *Norman* and *French* Followers; and that if there were any Original Contract ever entred into by the *Engliſh Saxon* Kings, it was quite void upon the Conquerors obtaining the Crown, and ſubduing all the People of this Nation; ſo that whatever Liberties we now enjoy, they were but the gracious Conceſſions of himſelf, and his Succeſſors, without any ſuch Original Compact.

J. I confeſs it is ſo alledged by ſome high flying Gentlemen, who, if they could, would make us all Slaves to the King's Abſolute Will; but without any juſt grounds

in

in my Opinion, ſince every one of their Suppoſitions are either falſe, or built upon rotten Foundations. For in the firſt place, a Conqueſt in an Unjuſt War (as I have already proved) can confer no Right on the Conqueror over a free People; and if this War were never ſo Juſt, yet could not he thereby have acquired any Right over the whole Kingdom, ſince the War was not made againſt the *Engliſh* Nation, but *Harold* only, who had uſurped the Crown contrary to Right: ſo that King *William* could have no Right to it without the People's Conſent in their Great Council or Parliament, which moſt of the Hiſtorians of thoſe times ſay he obtained; but indeed, King *William* (whom you call the Conqueror) never claimed by that Title, but by the Donation or Teſtament of King *Edward* the Confeſſor, and the Conſent or Election of the People of *England*, as all his *Engliſh-Saxon* Predeceſſors had done before him; nor did he give all, nor yet a third part of the Lands of *England* to his *Norman* Followers, as you ſuppoſe; or if he had, would it do the buſineſs for which it is urged, ſince his *Norman* and *French* Followers to whom he gave thoſe Lands, were never conquered, but were (if any thing) the Conquerors of others, and from them moſt of our Ancient *Engliſh*

Engl. Nobility and Gentry are lineally descended, or else claim under their Titles by Purchases, Mariages, *&c.* and so succeed to all their Rights and Priviledges. And at the worst, supposing King *William* to have in some Cases governed Arbritrarily, and like a Conqueror over the *English*; this was not so, till he was provoked to it by their frequent Plots and Conspiracies against him; and yet even that was done contrary to his Coronation Oath, which was the same that all the *Saxon* Kings had taken before, only with this Addition, That he should govern as well his *French* as his *English* Subjects by *equal Law or Right* *, so that his wilful Breach of this Oath could not give him, or his Successors any just Right by the Sword over the Lives, Estates, or Liberties of any *Englishman*, who had never fought against him, nor offended his Laws. And tho I should grant that this King, and his Son *William Rufus*, governed his *Norman*, as well as his *English* Subjects very Arbitrarily, and contrary to his own Laws; yet did his Brother, King *Henry* 1st, make both his *English* and *Norman* Subjects large

* *See his Coronation-Oath in Mr.* Atwood's *Treatise of the Oath of Abjuration*, p. 96.

amends

amends by the great Charter of their Ancient Liberties, which he granted immediately after his Election to the Crown by the Chief Biſhops, Lords, and Freemen of the Kingdom; and upon which the great Charter of *England*, renewed by King *John*, and afterwards confirmed by his Son, *Henry* the 3*d*, were founded, being but larger Explanations thereof.

F. I confeſs this is more than ever I knew before; but what if a King of *England* (as King *James* lately did) will ceaſe to govern like a legal or limited King, and prove a Tyrant by breaking this original Compact, which his Predeceſſors made with the people, does it therefore follow that he may be reſiſted if he does? or can he ever ceaſe to be King, or forfeit his Royal Dignity, if he acts never ſo Tyrannically? for ſure if all reſiſtance of his Power be unlawful, as being ſo declared by ſeveral Acts of Parliament in King *Charles* the Second's Reign, he can never ceaſe to be King, except he will wilfully turn himſelf out of the Throne.

J. I am very well ſatisfied that thoſe Acts you mention were only made upon this Suppoſition, That the King would never violate the Fundamental Laws of the Kingdom, by which

which he became King, or go about to change the Conſtitution of the Government; ſince that had been to give the King an Irreſiſtible Power to make us all Slaves whenever he pleaſed; ſo that our Religion, Lives, and Civil Liberties, would lye not only at the King's mercy, but at the mercy of thoſe Miniſters that govern him; and therefore as it can never be ſuppoſed to have been the intent of that Parliament to tye up themſelves, and the whole people of this Nation to the King on ſuch hard terms; nay, ſuppoſing that the Parliament had done it, I do not think they had any right ſo to do, ſince they were intruſted by thoſe that choſe them, not to alter the Fundamental Conſtitution of the Government, but to ſtrengthen and confirm it; ſo that if by this Act of Non reſiſtance the Government might eaſily be altered, and the Legiſlative Power, as well as that of raiſing Money, may be taken out of the Power of the King, and the Two Houſes, and ſhould be put ſolely in the King's perſon, the whole frame of the Government would not only be altered, but actually diſſolved, and conſequently Reſiſtance in this caſe would not be a crime, but a duty; ſince Parliaments were inſtituted for the maintenance of the King's Legal, and not Tyrannical Power, and for preſerving the people in that ſhare of the Government, which by the Fundamental

Conſtitution

Conſtitutions of the Kingdom belonged to them.

F. But pray tell me, Sir, Is there any expreſs Law for this Reſiſtance; for indeed, I could never hear of any ſuch? and therefore, I doubt, that if thoſe Noblemen and Gentlemen, who went in lately to help his preſent Majeſty, when Prince of *Orange*, had been taken Priſoners, and himſelf defeated by the King's Army; but they would have all of them been guilty of High Treaſon, by the Statute of 25 of *Edward* the Third; and ſure it wou'd have been no good Plea, to be allowed by the Judges, that they took not up Arms againſt the King or Government, becauſe the Government was diſſolved by the King's exerciſing an Arbitrary Power.

J. I would not argue with you what would have happened if the King had got the better, and either taken the Prince of *Orange* priſoner, or driven him out of the Kingdom; for I never knew in all the Hiſtories I have read, but that a Prince, who had the Armed Force of the Nation on his ſide, could hang whom he pleaſed;

and will always find Judges and Jury-men enough ready to side with him in it, as we have found by many late Examples.

But this is no Argument for the Right or justice of such Proceedings; for we know King *Charles* the First was tried and condemned by the Pretended Authority of the Rump Parliament, notwithstanding his denying that they had any Authority over him; and though it be true there is no express Act of Parliament to tell us when the Government is dissolved, and when, and in what case men may resist the King, or those commissioned by him; yet does it not follow that no such thing can ever be lawfully done; for it is sufficiently proved from the reason and necessity of the thing it self, though no express Law or Conditions be made for it; which may be also observed in all Moral or Religious Promises or Contracts. Thus if I promise, or swear to a man, never upon any account whatsoever to beat or kill him, this is still so to be understood, that he does not go about to beat, or kill me; for then my right of self-defence will take place, not-

notwithſtanding my Oath: ſo when people are married, they mutually promiſe each other to live together till death do part, yet no man will ſay a man or woman commits a ſin, or breaks this ſolemn Promiſe, if the former, by reaſon of Adultery in the Wife, or the latter, by the extream Cruelty or Harſhneſs of the Husband, do ſeparate from each other, and that perhaps for ever.

But I ſhall now ſhew you that there is a Reſiſtance allowed even by the Law it ſelf in ſome caſes, againſt thoſe that have the King's perſonal Commiſſion, as may appear by this Inſtance. Suppoſe an Officer with a Company of Soldiers ſhould under a colour of ſuch a Commiſſion take upon them to keep poſſeſſion of a Houſe, contrary to Law, do you not believe, but the Sheriff may upon a legal Proceſs iſſued out thereupon, raiſe the *Poſſe Comitatus*, and reſtore the Poſſeſſion by Force to the Right Owner, notwithſtanding this Commiſſion; and the Reaſon is plain, becauſe though the Officer may have the King's perſonal Command for ſo doing, yet it is the Sheriff alone who acts by a Legal Authority, and who

alone can juſtifie the uſing of this Force: Now if any man ſhould be killed in this Action, no doubt but the Officer and his Soldiers, and not the Sheriff, and the men that aſſiſted him, would be found guilty of murther. . .

F. I grant this may be ſo; but is not this the true reaſon of it, becauſe the Sheriff acts by the King's implyed Authority, without which no man can lawfully take up Arms? But how can this be juſtified, in caſe Arms were taken up upon ſuppoſition the Government is Diſſolved, which is all one as to affirm, That the King is no longer King?

J. I allow that great part of what you ſay is true, but not all; for in the firſt place it is plain, that there is a Legal Reſiſtance of thoſe Commiſſions, though iſſued by the King, and which is juſtifiable by Law, as appears by this inſtance; which rule holds good as long as the Laws can be permitted to have their due courſe: But what if the King will not permit that they ſhall, but will take part with this wicked Officer and his Soldiers, and maintain

maintain them in these violent Actions, and either not let the Law pass upon them, or if it does, should constantly Pardon them as soon as they had committed any such violent illegal Acts by his Commands contrary to Law? Can any man believe that such Proceedings, if commonly practiced, would not quickly dissolve the Government, and make such a King cease to be so, since he refused to Govern and Protect his Subjects according to Law, and his own Coronation-Oath, which virtually contains those Conditions on which he holds his Crown? for when there is no Justice to be had in the Kings Courts, it then becomes a meer Anarchy, wherein there can be nothing but Rapine and Confusion, and consequently puts men in a State of War.

F. I have I know not what to say to this; But can you shew me any express Law for the King's ceasing to be so, in case he thus leave off to Protect his People, and Govern them according the Laws of the Land?

J. Yes that I can, for I can shew you a good old Law of King *Edward*

the Confeſſor, * which is alſo among thoſe that were confirm'd by K. *Will.* I. whereby it is expreſly declared, 'That 'the King, who is God's Lieutenant, is 'appointed to this end, That he de-'fend his Kingdom and People, and 'above all things Reverence his Holy 'Church, and Defend it from Injuries, 'and take away Wicked doers from 'it; which unleſs he do, not ſo 'much as the name of King ſhall re-'main to him; *nec nomen Regis in eo 'conſtabit*, as it is in the Latine; which is likewiſe confirmed by *Bracton*, † an ancient Lawyer, who tells us, That it is the King's Crown or Authority to do Juſtice and Judgment, and to maintain Peace, without which (it follows) That this Crown or Authority *cannot Conſiſt, or be retained:* So in another place he ſays, That it is not the King, where only Will, and not *Law Governs*; and in another place he gives this reaſon for it, *Becauſe the King was Elected to do Juſtice to all men.* Therefore when he thus abuſes his

---

* Vid. Lambert's Saxon *Laws.* Leg. Guil. ch. 6, 7. *p.* 60.

† Lib. 2. *Chap.* 2.

Power,

Power, and deviates from the main end of his Creation, his Authority ceaſes, or is at an End; ſo that nothing ſeems plainer to me, than that all our Ancient Laws and Lawyers have declared, that a King who willfully Acts contrary to theſe known Laws of the Land, by turning Tyrant, and by endeavouring to alter the Ancient Conſtitution, and by thus breaking his Contract above-mentioned, looſes or forfeits all his Regal Dignity and Power.

F. But, pray Sir, How can this be, ſince our late Statutes declare the King not to be ſubject to any Coercive Power of the Two Houſes of Parliament?

J. I grant the Law to be ſo now; but from the beginning it was not ſo (as I ſaid but now); many of the *Saxon* Kings before the Conqueſt, were Depoſed by the great Council of the Kingdom; and ſince that time King *Edward* and *Richard* the IId. were ſolemnly Depoſed by Authority of Parliament; and that proceedings againſt them were never expreſly Condemned or repealed by any ſubſequent Statute

that I know of; but admit the Law is not ſo now, does it not therefore follow, that becauſe the King is not Puniſhable, nor Accountable to the Parliament, that therefore he is wholly alſo Irreſiſtable, and can never fall from his Royal Dignity, let him behave himſelf as he will towards his People? for ſure it is one thing to be accountable, or Puniſhable by the Parliament as his Superior, and another to be Diſobeyed and Reſiſted by the whole Nation, when it ſhall judge he has broken this Original Contract made by himſelf and his Predeceſſors, in violating the Fundamental Laws and Conſtitutions of the Government, by vertue of which he became King; ſince the former courſe of Proceedings muſt be according to ſome Law, but for this there is no Law now extant, but the contrary declared by ſeveral Statutes; whereas Reſiſtance in thoſe caſes I have now put upon a total breach of the Original Contract, is not only juſtifiable from the very Conſtitution of the Government; but alſo from the Right of Nature, *viz.* Self-defence; whereby, whoever violently Aſſaults me in Life, Liberty, or Eſtate, I am juſtified in Defending my ſelf againſt him; for otherwiſe

wiſe any Right were wholely inſignificant, if it might not be Defended by Force, when endeavoured by Force to be taken away.

F. But methinks this ſeems hard, and of evil conſequence? to take this Power of Judging the King's Actions, whether Legal or not, out of the Parliament, and to place it in the diffuſive Body of the whole Nation, whereby we of the high ſhoos would be made as capable of Judging when this Original Contract is broken, as the beſt Gentleman of you all; which, the temper of the meaner and beggarly ſort of People conſidered, ſeems very dangerous, ſince this would give them a Right to Rebel, and take Arms whenever they had a mind to it, as I have read in our Chronicles they did in *Richard* the IId. and *Henry* the VIth. and *Henry* the VIIth's time; and as they did lately in Plundering, Pulling down, and Burning Popiſh Gentlemen's Houſes, *&c.*

J. You very much miſtake me, for I do not put this power of Judging any where, but where it ever was, much leſs to give a Power of taking

up Arms, and raiſing Rebellion to the Mob, or moſt common ſort of People; but firſt to ſhew you, that every man in his ſeveral Station, and at his Peril, is to judge of the Legality and Illegality of the King's Commiſſions, or Proclamations: Pray let me ask you this queſtion, Suppoſe that the King grants a Commiſſion to certain of us Country Gentlemen, to raiſe a Tax contrary to Law, are we obliged to Obey it, or not?

F. No ſure, you are not, becauſe you ſhould be Puniſhed, not only in Parliament, but at Common Law, if you did.

J. Well then, it ſeems that we Juſtices and Deputy-Lieutenants may judge in this Caſe, but, pray tell me, ſuppoſe we ſhould notwithſtanding order this Tax to be levied, and you were High-Conſtable of the Hundred, Do you think your ſelf obliged blindly to obey our Orders, being ſo Notoriouſly contrary to Laws?

F. I think truly I ſhould not, but ſhould plainly tell your Worſhips, that I was not obliged either by Law or in-

in Conſcience to have any hand in oppreſſing my ſelf and my Neighbours, and ſhould deſire you to put this ungrateful Task upon ſome Body elſe, ſince I thought my ſelf liable to be called to Account one time or other, if I did it.

J. Very well; but if you and the other High-Conſtable of the Country ſhould agree with us Juſtices to raiſe this Tax, Do you think the Petty-Conſtables and Aſſeſſors were obliged to act by this New Commiſſion contrary to Law?

F. I do not think that if we High-Conſtables ſhould be ſuch Fools and Knaves, the Petty-Conſtables and Aſſeſſors were obliged to be ſo too.

J. Well then, you ſee that not only we Gentlemen, but you Yeomen can judge, (nay, are obliged at your Perils to do it) when things are impoſed upon you contrary to Law; nay, and to refuſe to execute them too.

F. I grant all this is true, but this is not Reſiſtance by force; but I ſuppoſe you

you Gentlemen would count it downright Rebellion in us Country-Fellows, if you ſhould tell us ſuch a Tax already impoſed was according to Law; and we ſhould be ſo far from paying it, as to raiſe the Country, and fall upon you Commiſſioners that went about to raiſe it by diſtraining or impriſoning the Refuſers.

J. By your favour, Neighbour, your very Refuſal to levy this Tax is a Civil Reſiſtance; ſince all Diſobedience to the Command of Superiors is ſo, as proceeding from a Right that thoſe that diſobey ſuppoſe they have of judging of the Legality or Illegality of ſuch Commands; but as for forceable Reſiſtance, though I do not allow it to you, or any man elſe, as long as no Force is uſed againſt them, yet ſo much let me tell you, that if we Deputy-Lieutenants and Juſtices of the Peace, ſhould ever be ſo fooliſhly wicked as to take upon us to aſſiſt the King by the power of the Trainbands, or a ſtanding Army, to levy any Tax without Act of Parliament, or colour of Law at leaſt, but that not only you of this County, but of all the Counties in *England*, might lawfully ſtand upon your defence, and reſiſt

reſiſt this Rapine and Violence; ſince if this were once permitted, it would in a moment alter the Conſtitution of the Government in a main Fundamental Point. The like I may ſay of any other matter of the ſame nature, if it ſhould be impoſed upon you by Force, contrary to Law, that is, contrary to, or without any Act of Parliament to warrant it.

Nor would this juſtify all the Rebellions you mention to have been raiſed by the Common People in thoſe ſeveral Kings Reigns; ſince thoſe were raiſed upon levying of Taxes impoſed by the King and Parliament, which is the ſole Supreme Legiſlative Power of the Nation, where I grant it is Rebellion to reſiſt; whereas that Reſiſtance, which I only now ſuppoſe to be Lawful, is againſt the King's perſonal Commands or Commiſſions in oppoſition to known Laws, which is not to reſiſt the Supreme Power of the Nation, but only the King's Perſon, when he acts not as King, but as a private man.

F. But, pray Sir, is not this to ſeparate the King's Perſonal, from his Politick Capacity, to ſuppoſe the man may be

be reſiſted, and not the King; or the King's Perſonal, but not his Legal Commiſſions or Commands? for to do this, I have heard, has been declared to be Treaſon?

J. This is alſo juſtifiable by Law in ſome Caſes; for if the King ſhould happen to prove mad, (as divers Kings have) pray do not his Servants about him hold or tie the Madman, and yet how can they do this, without binding the King? And, pray tell me, what difference is there between Madneſs, which is a Natural Diſability and Tyranny, which is a moral incapacity to govern? ſince both are alike deſtructive to the Common Good of the Nation. And when you ſuppoſe we may lawfully diſobey the King's perſonal Commands, what do we but then by diſobeying the King, diſtinguiſh between the King's politick and his perſonal Capacity; that is, when he acts legally as King, and when he iſſues out his Commiſſions or Commands, without any Law to warrant him? or elſe when the Perſons commiſſioned are made by Law incapable of the King's Commiſſions, as the Popiſh Officers lately were? ſince otherwiſe we were all obliged to yield the ſame

ſame Obedience to the one as well as to the other.

Nor is it at all harder, but much eaſier to judge, when ſuch Commiſſions or Commands are attended with Force and Violence, and when they are not; ſince certainly every plain Country-Fellow can much better tell, when a thing contrary to Law, is put upon or exacted of him by Force, than when it is only barely commanded or required of him by a Commiſſion or Proclamation; ſeeing the latter only reaches the Underſtanding, but the former not only touches the Underſtanding, but the outward Senſes of Hearing, Seeing and Feeling. To conclude, I would not have you therefore believe that I allow this general Reſiſtance to the whole Nation, but only when by a General Violation of our Fundamental Liberties, the whole Conſtitution of the Government comes to be in danger of an utter Ruine and Subverſion, by breach of the Original Contract abovementioned: and that theſe Violations and Oppreſſions do ſome way or other concern the whole Body of the People of this Nation, that is, all Orders and Degrees of men, and then only (and not till then) I look upon ſuch a general Reſiſtance of the King, and thoſe com-

commissioned by him to be lawful; that is, when all other Remedies are become absolutely desperate and impracticable, thro' the King's wilful Obstinacy to amend such Violations.

F. I grant this seems very reasonable, but pray tell me what those grand Violations are, that can thus alter the Fundamental Constitution of the Government, and can make a total breach of this Original Contract?

J. They do, I conceive, consist but in a few Points, and they are these.

First, If the King should take upon him to make Laws, either concerning Religion, or Civil Matters, and to impose them upon the People without their Consent in Parliament.

Secondly, If he take upon him to dispense with all Laws, and especially when his hands are tied up, by a particular Clause to the contrary, that he shall not so dispense with them.

Thirdly, If he take upon him of his own head, without the Advice or Opinion of his Judges, to raise Money upon the Nation: Or, *Fourthly*,

Fourthly, If he corrupt the Judges to give their Opinions according to his humour, either by promiſing of Rewards, or threatning them if they refuſe; and will put none into thoſe places, who will not do whatever he commands them, or turns them out as ſoon as they act otherwiſe.

Fifthly, If he go about to alter the ancient Conſtitution of Parliaments, and bring the Election of the Members of the Houſe of Commons, only into the hands of thoſe of his own Party or Opinion, whereby our Liberty of Electing and Voting by our Lawful Repreſentatives would be quite taken away. The like I may alſo ſay of the Houſe of Peers, if he ſhould go by Force either to exclude the Biſhops or Temporal Lords, who have a Right of ſitting there by Preſcription; and ſhould, under pretence of his Prerogative, bring ſuch as had no Right to ſit there at all.

Sixthly, and laſtly, If he ſhould go about commonly or generally, to take away the Subjects Lives, Liberties or Eſtates, by an Arbitrary Power, contrary to

to Law, upon pretended Crimes, and without ſuch due Trial as the Law requires.

Now I think you cannot but acknowledge, that moſt (if not all) of theſe Heads, are eaſily to be judged of by all the People of *England*, when they are come to that extremity that we can have no reaſon to doubt of it.

F. But, pray Sir, tell me who ſhall judge of theſe Violations, or what number may be allowed to riſe and redreſs them?

J. The Judges are, I told you before, the whole Body of the Nation or People, every one in his private Capacity; that is, not the Clergy alone, or the Lords alone, or the * leſs Nobility or Gentry, and much leſs you Yeomen, or landed men, and leaſt of all the meer Rabble or Mob, but all men of all Orders and Conditions taken together; and as for the number, it is any, though never ſo ſmall, that are able to make a head till more can come into their Aſſiſtance.

* i. e. *Nobiles Minores.*

F. But

F. But would not a Free Parliament be a much better Judge of these Violations, than this general Body of the People?

J. I grant it, if a Parliament may be had that were free and unbiass'd; but what if the King resolves not to call any? or, if he does, will not give them leave to sit till they have redress our Grievances? Or, what if he will not call one, till he thinks he can make or pack it according to his own mind? The Nation may at this rate be enslaved as much, nay worse, by having the appearance of a Parliament to confirm the King's Arbitrary Power, than if he had acted by none at all; so that in these Cases there can be no other Remedy left us, but an Appeal to the General Body of the People, with whom that Original Contract I mentioned was at first made; not but that a Free Parliament or Convention, when ever it can meet, may be of excellent use to examine what the People (who thus take up Arms) have acted in defence of their just Rights and Liberties, and to judge and declare it to have been well or ill done, and upon what grounds; and this hath been the course of

of all Parliaments that have been called immediately after any great and general Reſiſtance or Revolution, made upon the Accounts abovementioned. This I could prove to you from ſeveral Inſtances in divers Kings Reigns ſince the Conqueſt, were it worth my pains; but ſtill in all thoſe Caſes the firſt oppoſition hath been from the great Body of the Clergy, Nobility and People together, as you may particularly read in the Reign of King *John*, not long before the great Council at *Runney Mead*.

F. But, pray Sir, can you alſo juſtify thoſe Lords and Gentlemen who took up Arms, and declared for the Prince of *Orange*; and alſo thoſe Lords, together with the Officers and Soldiers, who deſerted the King, and went into the Prince's Army? Pray, Sir, did you look upon the Government to be then actually diſſolved when they went in to him, and that the King, by the breach of the Original Contract, was then no longer King?

J. I do not ſay ſo; for though thoſe Violations, if obſtinately perſiſted in without amendment, were enough to create ſuch a Diſſolution, and conſequently a For-

Forfeiture of the Crown, as they wrought at the laſt; yet the Government can never be diſſolved, ſo long as there remain any hopes that the King will amend thoſe Violations he has made, in a Free Parliament; for the obtaining of which, as it was the chief cauſe of his Highneſs's coming over, ſo was it alſo of thoſe Lords, Gentlemen and Officers going in to him, or declaring for him: and this, I think, they may very well juſtify both in Honour and Conſcience. And though there be no expreſs Law for it, yet it is no more than what the Nobility, Gentry and People of other Kingdoms as well as this, have many times done before in former Ages, when their Kings being miſled and deluded by evil Councellors or Miniſters of State, have made the like Breaches upon their Liberties. And though I confeſs ſuch taking up of Arms have not always met with the deſired Succeſs, yet for the moſt part they have, and then ſuch wicked Judges and Councellors have not failed to be puniſhed, and thoſe Lords, Gentlemen and others, who ſo nobly and ſtoutly ſtood up for the Rights and Liberties of the Nation have been alſo pardoned by Act of Parliament, and that with the King's own

consent, when those wicked men were once removed; but the King himself was never touched, till by his own wilful and obstinate persisting in such violent courses, he let the Nation see that he was wholely irreclaimable, and obstinately bent to destroy our Liberties, and set up Arbitrary Government and Tyranny in this Kingdom, as I could shew you from several Instances in the Reigns of King *John*, *Henry* III. *Edward* I. and *Richard* II. if it were necessary to give you a particular History of all those Transactions; so that I suppose a twofold Right of Resistance in the People, the one warranted by the Laws and Constitution of the Government, which may well consist with our Loyalty to the King, and to the intent only to obtain a Free Parliament, to redress Grievances, and punish those evil Councellors who have been the chief Ministers and Designers of Arbitrary Power, as in the Case of King *James* before his departure; the other Natural, when the Government by the King's wilful and obstinate refusal to redress such Grievances, by ceasing to govern us according to Law, he thereby also ceases to be King; and then the Commonwealth or Civil Society being without a Head to execute

cute Common Justice, was absolutely dissolved.

F. What then is meant by these words in the late Vote and Declaration of the *Convention*, viz. *That King* James *having withdrawn himself out of the Kingdom, hath* abdicated *the Government?* Do you believe that the King's bare desertion of the Kingdom, when he declared he could not help it, should be looked upon as an *Abdication* of the Government? methinks that seems somewhat hard to conceive.

J. To deal freely with you, I never understood the word *Abdicate* in that Sense, but only according to all the precedent Clauses in this Vote, *viz.*

That the King, by endeavouring to break the Original Contract between the King and his People, and by the Advice of Jesuits and wicked Persons, having violated the Fundamental Laws, and having withdrawn himself out of this Kingdom, hath abdicated *the Government.*

Where you may observe that the word *Abdicated*, relates to all the Clauses aforegoing, as well as to his deserting the King-

Kingdom, or elſe they would have been wholely in vain; ſo that the meaning of this word in this place is no more, than that King *James*, by violating the Original Contract abovementioned, and by endeavouring to ſubvert the Fundamental Conſtitution, and by refuſing to reſtore it to its former Condition, (all which was expreſſed by his withdrawing himſelf out of the Kingdom) hath *abdicated* the Government; that is, by refuſing to govern us according to that Law by which he held the Crown, he hath implicitly renounced his Title to it; as when, for example, a Tenant for Life aliens in Fee, though he take back from the Grantee a Leaſe for Life or Years, yet he thereby forfeits his Eſtate, and the Tenant in Reverſion may enter; and the reaſon is, becauſe he parts with that Eſtate which he held by Law, and will hold by another Title which the Law doth not allow; for *abdicare* in the *Latin* Tongue, ſignifies no more than to renounce, or diſclaim, as I could ſhew you from divers Phraſes in that Language, were you a Scholar good enough to underſtand them; and this may be done by divers other means, beſides expreſs words: For if Kingſhip be a Truſt for the preſervation of the Rights and Liberties

berties of the People, than ſuch Actings contrary to that Truſt as plainly ſtrike at the very Fundamentals of the Conſtitution, are not only a breach of that Truſt, but a tacite Renunciation of it alſo, which I prove thus; the doing of any Act that is utterly inconſiſtent with the Being and End of the thing for which it is ordained, is as true a Renouncing, or *Abdication* of that thing, as if it were made in expreſs words, as I have now proved in the Caſe of Tenant for Life.

F. I confeſs this is more than ever I heard before; but, pray, What do you think was the reaſon that the Convention made uſe of this Hard word *Abdicate*; (which I confeſs, to us Country Fellows, ſeem'd as bad as Heathen Greek) when they might as well have made uſe of plain Expreſſions, ſuch as Renounce or Forfeit, which you have now made uſe of?

J. I will tell you, Neighbour, my Opinion of this Matter, and if I am out you muſt pardon me; becauſe thoſe Wiſe men in the Convention, who had the Wording of this Vote, were afraid

that thoſe plainer words you mention, would have been of too hard digeſtion to a great part of the Country Gentlemen, who had been bred up with different Principles; and therefore uſed the word *Abdicate*, as that which though it implied both a Renunciation, and alſo a Forfeiture of the Royal Power, yet not being commonly ſo underſtood, made ſome men only to underſtand it of the King's Deſertion of the Throne by his going away; a Notion, which becauſe it ſerved a preſent turn, mens heads were then very full of: But indeed if this Deſertion be cloſely examined, it will not do the buſineſs for which it is brought, as you have already very well obſerved.

F. I confeſs I never underſtood the true ſence of this word *Abdicate* before, much leſs the reaſon why it was made uſe of; therefore commend me to the honeſt bluntneſs of the *Scotch* Convention, which (as I am informed) did not ſtick to declare, That King *James* by ſubverting the Fundamental Laws of that Kingdom, had forfeited the Crown: But, pray Sir, tell me,

me, what those Acts, or Violations of this Original Contract were, which you suppose to cause this tacit Renunciation of the Crown?

J. As for these I need not go far, since they are all plainly expressed in the Convention's late Declaration, as striking at the root, or very Fundamental Constitution of the Government it self, *viz.* Raising of Money contrary to Law, that is, without any Act of Parliament, as in the late Levying of the Customs, Excise, and Chimney-Money upon Cottages and Ovens, contrary to the several Statutes that conferred them on the Crown. 2dly. His Assuming a Legislative Power, by Dispensing with all Statutes for the Protestant Religion established by Law; whereby he at one blow took away above Forty Acts of Parliament; and he might at this rate as well have Dispensed with the whole Statute-Book at once by one general Declaration. 3dly. Raising a Standing Army in time of Peace, and putting in Popish Officers, contrary to the Statute provided against it; for these being but the King's half Subjects (as King *James* the Ist. called them

in a Speech) might be looked upon when in Arms, as no better than Enemies to the State; so that by thus Arming our Enemies, it was in effect a declaring War upon the People, since it was abusing the power of the Militia, which is intrusted with the King for our Safety and Preservation in our Religion, Liberties and Civil Properties, and not for the destruction of them all, as we found by woful experience, must have inevitably befallen us. 4thly. The Quartering of this standing Army in Private houses contrary to Law, and the Petition of Right, acknowledged by the late King his Father. 5thly. His Erecting a new Ecclesiastical Court by Commission, contrary to the Statute that took away the High Commission Court. 6thly. And by the pretended Authority of this Court, suspending the Bishop of *London* from his Ecclesiastical Jurisdiction, and turning out almost all the Fellows and Scholars of *Magdalen* Colledge, because they would not chuse a President uncapable of being Elected by that Colledge Statutes. 7thly. By Imprisoning the Archbishop of *Canterbury* and the Six other Bishops, only for Presenting

ſenting him with an humble Petition not to impoſe the reading of his Declaration of Toleration, upon the Clergy of the Church of *England*, as being contrary to the known Laws of the Kingdom; and then Trying them for this as a High Miſdemeanor, though it was contrary to the Opinion of Two of the then Judges of that Court of Kings-Bench. There are alſo other things of leſſer concernment, as Packing of Juries, and unjuſt and partial Proceedings in Tryals, with exceſſive Fines and cruel Whippings; which becauſe they were done by the Lord Chief Juſtice *Jefferies*, and the other Judges, contrary to Law, I leave them to anſwer for it; whereas the inſtances I have now given, were in ſuch grand Violations, as were done by the King's own perſonal Orders and Directions, or elſe could never have been done at all: So that by his willful acting theſe things, and obſtinately refuſing to let a Free Parliament ſit to Settle and Redreſs them, but rather chuſing to leave the Realm, than he would give way to it, when he might have done it: I think, upon conſideration of the whole matter, it will

appear, that the Convention had good and just Reasons for declaring the Throne Vacant, since the King had not only broke his first declaration he made in Council, to maintain the Church of *England* as by Law Established, and the Liberties and Properties of his Subjects; but his own Coronation-Oath besides, if he took the same his Predecessors did; and if he did not, he ought not to receive any benefit by his own default, but is certainly bound by the Oaths which his Grandfather King *James*, and his Father King *Charles* took before him.

F. I confess these seem to be great breaches of the very Fundamentals of our Religion, Liberties, and Civil Properties, if done by the King's express Order and Directions; and if that he afterwards refused to disclaim them, and suffer the Authors to be Punished in Parliament, as they deserved, makes all those faults indeed fall upon the King himself, and consequently seem to amount to a Forfeiture of the Royal Dignity, according to that Law of *Edward* the Confessor, you have already cited, *That if the King fail to Protect the*

the Church, and Defend his Subjects from Rapine and Oppreſſion; the very Name (or Title) of King ſhall no more remain to him.

But, pray Sir, ſhew me in the next place, how the Convention could juſtifie their Voting the Throne Vacant; for Granting that King *James* had implicitly Abdicated, or Renounced all his Right to the Crown by the Actions you have but now recited: Yet if this Kingdom (as I have always taken it to be) is Hereditary, and not Elective, I cannot conceive how the Throne can ever be Vacant, that is, void of a Lawful Heir, or Succeſſor, as long as one of the Blood-Royal, either Male or Female, is left alive; ſince I have heard it laid down as a Maxim in our Law, *That the King never dies.*

J. I grant this to be ſo upon all ordinary Deaths or Demiſes of a King or Queen (as the Lawyers term it): But there are great and evident Reaſons why it could not be ſo upon this Civil, though not Natural, Death of the King; as Firſt, the natural Per-

ſon of the late King being ſtill alive, none can claim as Heir to him whilſt he lives, ſince it is a Maxim, as well in our Common as in the Civil Law, *That no man can be Heir to a Perſon alive.*

F. I grant this may be ſo in ordinary Eſtates of Inheritance in Fee-ſimple; but I take it to be otherwiſe in Eſtates Tail; for if a Tenant in Tail had become a Monk whilſt Monaſteries were in being in *England*, the next Heir in Tail might have entered upon the Eſtate, becauſe the entering into a Religious Order, was looked upon as a Civil Death: now I take the Crown to be in the nature of ſuch an Eſtate-Tail, where the Heir Claims not only as Heir to the laſt King, but to their firſt or common Anceſtor, on whom the Crown was Entailed; otherwiſe Brothers or Siſters by the half Blood, could never Succeed to each other, as Queen *Mary* did to King *Edward* the VIth.

J. Well, Neighbour, I ſee you have either read *Littleton*, or elſe been very well inſtructed in this Law concerning Entails,

Entails, and therefore I will argue this Point no farther with you; but if the Throne were not Vacant, pray then tell me, whom think you the Convention ſhould have immediately Declared King or Queen, whether the Titular, or pretended Prince of *Wales*, or the Princeſs of *Orange*; Since only one of theſe can Claim as Heir by vertue of the Entail you now mentioned?

F. No doubt but the Prince of *Wales* would have been the Right Heir, could we have been aſſured of his being really born of the Body of the Queen; but ſince, I confeſs, there is a great doubt in moſt Perſons throughout the whole Nation concerning it, I muſt ſo far agree with you, that he could not well be declared King till his Legitimacy were cleared, and thoſe juſt ſuſpicions we lye under to the contrary, taken away; but then on the other ſide, till this were done, I do not ſee how the Convention could well juſtifie their placing the Princeſs of *Orange*, or any Body elſe in the Throne.

J. We ſhall come to that by and by; but in the mean time, pray obſerve, that here was a great and general doubt, who was the next lawful Heir, whether the Prince of *Wales*, or the Princeſs of *Orange*; now in Diſputes of this nature, in all the hereditary, limited Monarchies in *Europe*, the States of the Kingdom have always been the ſole Supream Judges of ſuch Controverſies; and whom they have owned, and admitted as next Heirs, have always been taken and owned for Lawful Kings, both at Home and Abroad; as I could ſhew you from divers Inſtances, not only in *England*, and *Scotland*, but *France*, *Spain*, and *Portugal*; And till this were done, the Throne muſt neceſſarily remain vacant, and all this without making the Crown Elective; for what is this vacancy of the Throne, but when through the Ignorance of the ordinary Subjects whom to place therein, by reaſon of divers Claims of different Competitors, none can be admitted to fill it, (that is, to the exerciſe of the Kingly Office) till theſe diſputes could be decided by their proper Judges, *viz.* the Eſtates of the Kingdom,

Kingdom, which is all one, as to declare the Throne to be vacant? since it must necessarily be so, till they were fully satisfied who ought to fill it.

F. I confess, what you have now said, carries a great deal of reason with it; but how can you justifie the Convention's placing their present Majesties on the Throne, without ever so much as examining whether the supposed Prince of *Wales* were really born of the Body of the Queen, or not; which, in my Opinion, ought to have been the first thing to be enquired after; whereas I do not find that the Convention, nor yet the present Parliament, have taken any more notice of him, than if there had been no such thing in nature, as a Son then born, or pretended to be born, during the Marriage between the late King and Queen.

J. If the Convention have done well in declaring the Throne vacant, I think I can easily justifie their filling it with their present Majesties; and that upon two several Considerations:

The

The First is, that I ſuppoſe the Prince of *Orange*, by his Victory over King *James*, ſufficiently declared by his flying from *Salisbury*, and disbanding his Army, and then quitting the Kingdom, (if he had done nothing elſe) did thereby loſe his Right to the Crown; and ſo conſequently to the Peoples Allegiance; and the Nation being then free, and without any King, who had a better Right to be placed in the Throne, than the Prince of *Orange* their Deliverer? and beſides this, in reſpect of the Nation, King *James* (as I have already proved) having Abdicated or Forfeited his Right to the Crown, by his notorious Breach of the Contract above-mentioned, and by his wilful perſiſting in it; I look upon the whole Nation at his departure as fully diſcharged from all Oaths of Allegiance, not only to King *James*, but to his Heirs likewiſe; and therefore were not obliged to look after this ſuppoſed Prince, nor to examine his Legitimacy as Heir apparent to the Crown.

F. I cannot comprehend how this can conſiſt with thoſe Acts of Parliament

ment of Queen *Elizabeth*, and King *James*, which oblige all the Subjects of this Realm to take the Oaths of Supremacy and Allegiance to the King or Queen, and to their Heirs and Lawful Succeſſors; and ſure, I think, nothing leſs than an Act of Parliament can alter theſe former Statutes and ſolemn Declarations concerning the Succeſſion in a Right Line: And I ſuppoſe you will not ſay, that the Convention (who certainly were no Parliament) could without the Authority of a Lawful King and Parliament, alter the Ancient Laws of Succeſſion, ſince I have heard it is a Maxim in Law, *that nothing can be undone, but by the ſame Power that made it*; And therefore, in my Opinion, the Convention was too quick in Declaring their preſent Majeſties King and Queen, before they had examined the Prince of *Wales*'s Title; who was commonly reputed, and prayed for in all our Churches, as Heir Apparent to the Crown.

J. I confeſs you have in few words urged all that can well be ſaid againſt the late Act of the Convention, in declaring their preſent Majeſties King and

and Queen: Therefore in Answer to this Objection, give me leave in the first place to tell you, that you have been misinformed, That because the Acts for the Oaths of Supremacy and Allegiance, obliged us to take it to the late King, and his Heirs and Lawful Successors; that therefore no Person can be such a Lawful Successor, unless he Claim in a right Line, by descent from the last King; since long before these Acts were made, by the Ancient Oath of Fidelity at Common Law, and which used to be required in all Court-Leets, men were as much obliged to the *King, his Heirs and Successors*, as they can be by any of these later Oaths, and yet no body then doubted, before those Acts were made, to pay Allegiance to that Person whom the Estates of the Kingdom had solemnly declared to be lawful King or Queen, without ever examining whether such Kings, or Queens, were really and truly next Heirs by Blood, or not; as I can shew you from divers Examples, had I now time for it.

And there is indeed great reason for their so doing; for since all disputes about

bout the right of Succeſſion to the Crown, muſt be decided by ſome proper Judges; or elſe be left wholly to the Deciſion of the Sword; and ſince (as I ſaid but now) in all the limited Kingdoms of *Europe*, the Eſtates of ſuch Kingdoms have been always appeal'd to by all the contending parties as their only proper Judges of their diſputed Titles; it is but reaſon, that all private Subjects ſhould ſubmit and acquieſce in their final Judgments; ſince they are all virtually Repreſented in ſuch Aſſemblies, as the Repreſentative Body of the whole People, or Nation: Therefore, if the Convention of the Eſtates of *England*, have for divers weighty Reaſons, thought fit to declare their preſent Majeſties Lawful King and Queen, and to place them on the Throne, as then vacant by King *James*'s Abdication, I think all the Subjects of this Kingdom are bound to bear true Allegiance to them, and to confirm it by the Oath appointed for that end, whenever they ſhall be lawfully required thereunto.

F. Well, Sir, but is not this to alter one part of the Original Contract, which

which those that are against the present Settlement, suppose to be the Right of Hereditary Succession to the Crown, and that in a right Line: So that if the supposed Prince of *Wales* be lawful Heir to King *James*, to place any body else therein, seems to render the Crown for the future not Successive, but Elective; for if it may be bestowed now according to the humor of the present Convention, it may be done so again the next Succession, and so the right Heirs put by from time to time, for the same, or some like Reason as now.

J. That does not at all follow; for if you will allow that the Throne was vacant by the Abdication of King *James*, and that her present Majesty Queen *Mary* is lawful Heir, if the pretended Prince of *Wales* were away; I will prove to you, that the late Convention and present Parliament, have done all they could or were obliged to do in this juncture, in placing Their present Majesties on the Throne, and Recognizing their Title, without taking any notice of this pretended Prince; of whose Birth, whether true

or

or falſe, I ſhall not now ſay any thing one way or other; nor ſhall trouble my ſelf to inquire into the Validity of thoſe Suſpitions that may render his Birth doubtful to the generality of the Nation: And therefore in the firſt place, I deſire you only to take Notice, that this Child was carried away by his Mother, when he was ſcarce yet ſix Months Old; 2dly, That the Midwife and all the chief Witneſſes, who could Swear any thing concerning the Queen's being really with Child, and brought to Bed of him, were likewiſe conveyed at the ſame time into *France*.

F. I grant it; but what do you infer from hence.

J. Why, only theſe two Concluſions:

1*ſt*. That neither the Convention nor Parliament are Obliged to take Notice of the Rights of any Perſon, tho' Heir to the Crown, that is out of the Dominions of *England*, if he be no neceſſary part, or Member of Parliament; if neither himſelf, nor any Body

dy for him, will put in his Claim to the Crown, upon the Demiſe of the King, either by Death, or Abdication; as in the Caſe now before us, there being then a Claim made in the late Convention by his Highneſs the Prince of *Orange* on the behalf of his Conſort the Princeſs, as Heir apparent to the Crown: The Convention were not obliged to look any farther after this ſuppoſed Prince, or to know what was become of him, whether he was Drowned, or taken at Sea by Pyrates, or he being Dead, another put in his place, or carried by his Mother into *France*: Since any of theſe might have happen'd for ought they knew, no body appearing to put in any Claim for him, or to deſire that his Cauſe might firſt be heard, before he was Excluded.

2*dly*, That if ſuch Claim had been made by any body for him, yet the Convention could by no means be obliged to do more than lay in their Power, or to hear, or examine the Validity of this Child's Birth; unleſs the Midwife, Nurſes, and others, who were privy to all the Tranſactions concerning

cerning it, were likewise present, and sent back to give their Testimonies in this Case; for if the Convention had proceeded to examine this matter without sufficient evidence, they could only have heard it *ex parte*, on but one side, and so might have sat long enough, before they could have come to any true decision in this matter; whilst in the mean time, the whole Nation for want of a King, were in danger of utter Ruin and Confusion.'

F. But, pray Sir, why could not the Parliament have sent over Summons to those Witnesses (which they say are no further off than *France*) to come and give Testimony in this great Cause, before they had proceeded to have declared the Prince and Princess of *Orange* King and Queen?

J. There may be several good Reasons given for it:

First, Because this Child being carried into the Dominions of a Prince who is a declared Enemy of our Religion, and Civil Interest of the *English* Nation,

Nation, he would never have consented to his being sent over to be viewed by those that the *Convention* should appoint for that purpose; without which Inspection, the Nation could never have been morally assured that this was the same Child that was carried away; since every one knows, that Infants of that Age are not easily distinguisht one from another, but by those that have been about them from the very time of their Birth.

Secondly, Because his Reputed Parents counting themselves already injured by the *Convention*, in declaring that the *King had* abdicated *the Government*, and that the *Throne was thereby become vacant*, would never have obeyed any Summons the *Convention* should have sent over, because they looked upon them not to have any Authority at all, as not being summon'd, nor sitting by vertue of that King's Writs.

Thirdly, Admitting that the *French* King would have permitted this supposed Prince to have been sent back, and that King *James* and his Queen would have obeyed this Summons, yet was it not

not for the ſafety of the Nation to ſtay for or rely upon it; ſince before this Queſtion could have been decided, great part of this Year had ſlipt away, and we being left without a King to head us, nor any Parliament Sitting, able to raiſe Money (which cannot be legally done, without the King's Authority in Parliament) the *French* King might, whilſt we were thus quarrelling amongſt our ſelves about a Succeſſor to the Crown, have ſent over King *James* with a great Fleet, and an Army of old Soldiers, and ſo have placed him again in the Throne, more Abſolute than ever he was before; ſince beſides that Legal Right of Succeſſion, (which I grant he once had) he might alſo have ſet up a new Right by Conqueſt, over this Kingdom.

So that all things being ſeriouſly conſidered, ſince the ſafety of the *People ought to be the Supream Law*, as ever hath been agreed as an undoubted Principle by all wiſe Nations, I think we have done all that could well be done, in this Caſe; nor have broken the Hereditary Succeſſion, in declaring King *William* and Queen *Mary* to be our Lawful

Lawful King and Queen; since if she were Lawful Queen, they might also declare him to be King, and make it Treason to conspire against him as well as the Parliament could do in the case of Prince *Philip* of *Spain*, who was * declared King joyntly with Queen *Mary*, tho' he had no other Right, but by Act of Parliament: So that if the late Convention have declared, That the Administration of the Government should remain solely in King *William* during his Life; this was only to put it out of all dispute, that none might at all doubt in whom the Supream Power lay, since it will not admit of any Division.

F. All this seems reasonable enough; but pray how comes it to pass, that King *William* is to enjoy the Crown, not only during the Queens Life, but his own also? this I heard Squire High-Church, and the Parson I last mentioned, cry out upon, not only as a horrid Breach of the Hereditary Succession,

---

*Vid. *the Act of* 2°. Mariæ, *confirming the Treaty of Marriage with King* Philip.

but

but also as a great wrong to the Princess of *Denmark*, and her Heirs, were the supposed Prince of *Wales* now dead, since it is directly contrary to the Act of Recognition of King *James* I. whereby the Parliament do not only 'declare him to be lawful and lineal 'Heir of the Crown, as descended from 'the Eldest Daughter of King *Edward* 'IV. But also they do thereby engage 'themselves, and their Posterity; to 'yield Obedience to King *James*, and 'his Right Heirs.

J. Pray satisfie those Gentlemen when you meet them, that if they once will grant that the late King *James* could Abdicate the Crown without his own express consent, and that declaring this supposed Prince to be King was altogether unpracticable and unsafe for the Nation, (as I have already proved) I think they need not be concerned, whether his present Majesty enjoys the Crown for Life, or not; as long as it is for the Peace and Safety of the Nation that it should be so; since it was for those ends alone that King *James* was set aside, and the supposed Prince past by, without so much

much as Enquiring into his legitimacy. If the Convention had lawful Authority to decide the greater points, they had certainly after they became a Parliament much more Authority to decide and ſettle the leſs material parts of this Controverſie, *viz.* The ſettlement of the Crown after the Queens deceaſe; ſince it is no more than what all former Parliaments have done in like caſes: Thus *Henry* the IV. and *Henry* the VII. were, formally declared, (nay the latter recognized) for lawful Kings by Authority of Parliament; notwithſtanding the lineal Heirs by blood were then alive and in being; and not only ſo, but before ever *Henry* the VII. married with the Princeſs *Elizabeth*, Daughter to King *Edward* the IV. the Crown was ſettled upon him, and the Heirs of his Body, by an Act which you may find in Print in our Statute-Books: Tho' he had no Right at all by Succeſſion, ſince his Mother the Counteſs of *Richmond*, from whom all the Right he could pretend to the Crown was derived, was then alive, nor had made any Ceſſion of it to him.

So

So that if this be true (which I am able to prove) that an Hereditary Succeſſion in a right Line, was never any Fundamental Law of this Kingdom. And,

Secondly, That after the Crown came to be Claimed by an Hereditary Right, which was no older than *Edward* the *Iſt*'s time, the Parliament have often taken upon them to break in upon this Hereditary Succeſſion, whenever the ſafety and neceſſity of the Kingdom required it. And,

Thirdly, That all thoſe Kings who have thus ſucceeded without this lineal Right of Succeſſion, have been not only, during their own Reigns, owned for true and Legal Kings; Attainders (of Treaſon, holding good againſt all Perſons that conſpired againſt them) but alſo after their Reigns were ended; for we ſee all ſuch Acts of Parliament made under them ſtand good at this day, unleſs it were thoſe that were Repealed by ſubſequent Parliaments: and can there then be any Queſtion made, but that the preſent Parliament have as much Power to ſettle the Crown upon his

preſent Majeſty for Life, as they had to ſettle it upon King *Henry* the IV. or *Henry* the VII. and the Heirs of their Bodies? ſince thoſe Princes could not deſerve more from the Nation, in freeing it from the Tyranny of the two *Richards*, the II. and III. than his preſent Majeſty hath done by freeing us from the Arbitrary Power of King *James*. And let me tell you farther, that the Gentlemen you mention were miſtaken in their Repetition of that Act of Recognition of King *James* the Iſt's Title; for though it is true they acknowledged him for undoubted lineal Heir of the Crown, yet they do no where in that Act tie or oblige themſelves and their Poſterity to him, and his right Heirs, by that Act of Parliament; but only in general, that they promiſe Obedience and Loyalty to that King, and his Royal Progeny; and ſure none will deny Their preſent Majeſties to be the true Progeny of King *James* the Iſt.

F. I grant this ſeems very reaſonable; but thoſe Gentlemen I now mentioned alſo ſaid, that *Henry* the IV. was in the Reign of King *Edward* the IV. declared an Uſurper by Act of Parliament;

liament ; and as for *Henry* the Seventh , he had either a Title from the Houſe of *Lancaſter* by the tacite conceſſion of his Mother , or elſe from that of *York* by the like tacite conceſſion of the Princeſs *Elizabeth* his Wife ; or elſe if there were no ſuch conceſſion, he was an Uſurper till he had Married the ſaid Princeſs, ſhe being Heireſs of the Crown. Pray what ſay you, Sir, to this ?

J. Pray tell thoſe Gentlemen from me, that they are quite out in their Suppoſitions ; for if an Act of Parliament of *Edward* the Fourth , be of ſufficient Authority to prove *Henry* the Fourth an Uſurper, I can give you another Act of Parliament (though not Printed) which reverſes the Attainder of King *Henry* the Sixth , *Margaret* his Queen , and Prince *Edward* 'their Son ; wherein it is expreſly 'declared, * that King *Henry* the Sixth 'was contrary to all Allegiance and 'due order, attainted of High Treaſon 'in the firſt Year of King *Edward* the 'Fourth ; wherefore it is by the Ad-'vice and Aſſent of the Lords Spiritu-

* Vid. Par. Rolles 1. H. 7. N. 16.

'al and Temporal, Assembled in Par-
'liament, Enacted, That all Acts of
'Attainder, Forfeiture, and Disablement,
'made in the said Parliament against
'the said Blessed Prince King *Henry*, are
'made void, Annulled and Repealed.
So that if the Attainder of *Henry* the Sixth was against all due Order and Allegiance, then certainly the said King must have been a Lawful King, and not an Usurper at the time of his Death; and if he were not so, then certainly the like must be affirmed of *Henry* the Fourth, from whom he was descended, and under whom he claimed: And as for *Henry* the Seventh, there was no formal Cession of their Right ever given by the Countess his Mother, or the Princess his Wife, either before, or after his coming to the Crown: And as for a tacite and implied Cession, expressed by saying nothing against it, pray tell me why we may not as well suppose a like tacite consent in the Princess of *Denmark*'s not making any Opposition or Protestation against this Act, whereby the Crown was settled upon his Majesty during his Life, but rather agreeing to it? for I have heard that several of her Servants in both Houses, did

did declare, that the Princeſs did not deſign that her future Right ſhould be any hindrance to the preſent Settlement. Pray therefore tell me, why may not King *William* hold the Crown after the Death of the Queen (if ſhe ſhould happen firſt to die) without any Uſurpation, as well as King *Henry* the Seventh held it after the Death of his Queen, notwithſtanding his two Sons, Prince *Arthur* and *Henry* both lived to be Married before their Father Died; and *Henry* the Eighth was then in his nineteenth or twentieth Year of his Age; old enough of conſcience to govern himſelf?

F. I confeſs theſe things were altogether unknown to me before, as they are I believe to moſt of my condition; and I give your Worſhip many thanks for your kind Information. But, pray Sir, reſolve me one Queſtion more, and I have done; Do you think a Man may Lawfully take the new Oath of Allegiance to Their preſent Majeſties, notwithſtanding King *James* is ſtill alive? and do you think I could juſtifie it (in Law) ſhould I be called to an account for it, if he ſhould again by ſome unexpected means or other obtain the Throne?

 J. Well,

J. Well, Neighbour, to ſatisfie you as to the firſt of your queſtions, I anſwer thus; I doubt not but you may Lawfully take this Oath, ſince the Parliament have done no more in thus ſetling the Crown, than what many former Parliaments have done before in like Caſes; whoſe Proceedings have been ſtill looked upon as good, and held unqueſtioned unto this day; as appears by the Preſident of *Henry* the VIIth. I now gave you; and upon which Declarations of Parliament (who are the only proper Judges, who have moſt Right to the Crown, in caſe of any diſpute about it) the People of this Kingdom have ſtill thought themſelves ſufficiently obliged to take ſuch Oaths of Fidelity and Allegiance, as the Government thought fit to frame, and require of them according to Law.

But, I confeſs, the latter of your queſtions is ſomewhat harder to be anſwered, becauſe it depends upon a matter that is farther remote, ſince we cannot tell whether if (ever at all) King *James* ſhould re-obtain the Throne, by wha

what means it may happen; for if it ſhould be by the Force either of the *Iriſh*, or *French* Nations, I doubt not but we ſhould be all made mere Slaves and Vaſſals, without any Law or ſetled Property, but his own Will: But if it ſhould be by any Agreement or Compoſition with him upon his Enga ement to Govern according to Law; the le me tell ycu, Not only your ſelf bu every other Subject that takes thi Oath, will have a good Plea in Law for taking it, by the Statute of the 11th. of *Henry* the VIIth. * whereby it is expreſly Enacted; 'That every 'Subject, by the duty of his Allegi-'ance, is bound to Serve and Aſſiſt 'his Prince and Sovereign Lord at 'all ſeaſons, when need ſhall require; 'and then follows an Act of Indem-'nity for all thoſe that ſhall perſonally 'ſerve the King, for the time being, 'in his Wars: Which were altogether unreaſonable, if Allegiance had not been due before to ſuch a King as their Sovereign Lord, mentioned in the Preamble; and if Allegiance were due

* *Chap.* 1.

to him, then certainly an Oath may lawfully be taken to obſerve it; ſince it is no more than what the Law hath ever required from Subjects to ſuch a King, not only by this Statute, but at Common Law too, as appears by my Lord *Cookes* Comment on the Statute of *Edward* the IIId. where he aſſerts not only from the Authority of this Statute, but alſo from the old Year-Books, that a King *de Facto*, or for the time being, is our Lord the King, intended in that Statute; and that the other, who hath a Right and is out of Poſſeſſion, is not within this Act.

So that, you ſee, according to this Act of *Henry* the VIIth. as alſo by the Judgment of the beſt Lawyers of *England*, whatever Perſon is once ſolemnly Crowned King of *England*, and hath been ſo Recognized by Authority of Parliament (as Their Preſent Majeſties have now been) are, and ever have been eſteemed Lawful and Rightful Kings or Queens, though they had no Hereditary Right of Succeſſion as next of Blood, as I have proved to you from the inſtance of King

King *Henry* the 4th. and 7th. and could do alſo by the Examples of Queen *Mary*, or Queen *Elizabeth*, (take which you pleaſe) ſince they could not both of them ſucceed as the Legitimate Daughters and Heirs of King *Henry* the Eighth: So that it is plain, one or other of theſe Queens had no better than a Parliamentary Title to the Crown: Therefore, upon the whole matter, whether Their preſent Majeſties are Heirs to the Crown by Lineal Deſcent, is not the Queſtion; but whether by the Law of *England* they are not to all intents and purpoſes Lawful and Rightful King and Queen; ſo that an Oath of Allegiance may be lawfully taken to them, and all men obliged to ſerve them in all their Wars and other Affairs, even againſt King *James* himſelf; ſince we cannot ſerve Two Maſters, that is, owe Allegiance to Two Kings at once.

F. I cannot deny but what you ſay ſeems not only very reaſonable, but alſo according to Law; but I heard the Squire and the Parſon we but now mentioned, poſitively aſſert, That the King

and Parliament had no Power to alter the Succeſſion to the Crown, though they would; and that therefore this Statute of *Henry* the Seventh, you now mentioned, which indemnifies all thoſe that take up Arms in defence of the King for the time being, is void: Firſt, Becauſe made by an Uſurper who had no Right to make ſuch a Law in prejudice of the true King, or the next Heirs of the Crown; but alſo becauſe (as they ſaid) it was but a Temporary Act, and was to laſt no longer than during his life; and, laſtly, becauſe this Statute hath never been allowed, or held for good in any caſes of Aſſiſting Uſurpers, ſince that time; for the Duke of *Northumberland* was Arraigned and Executed for Treaſon, in the time of Queen *Mary*, becauſe he had Aſſiſted and Taken up Arms on behalf of the Lady *Jane Gray*, who was Proclaimed Queen, and Reign'd as ſuch for about a Fortnight; and yet, tho the Duke Pleaded afterwards that he had Acted nothing but by Order of the Queen and Council for the time being; yet this Plea was over ruled by the Peers, who were his Judges, and he was Executed notwithſtanding. Laſtly, they ſaid, That this Statute was implicitly, or by conſe-

conſequence Repealed by thoſe Statutes of Queen *Elizabeth* and King *James*, which appoint the Oaths of Allegiance to be only taken to the King, his Heirs, and lawful Succeſſors; beſides a Statute of the 28th. of King *Henry* the Eighth, by which it is made Treaſon in any of thoſe on whom he had ſetled the Crown, or ſhould bequeath it by his laſt Will, to Uſurp upon the Right of each other; which could never have been, if the King or Queen for the time being muſt have been Aſſiſted and Obey'd by all the Subjects of this Realm, as if they were Rightfully ſo; and therefore they concluded, that this Statute of *Henry* the Seventh could make no alteration in the ancient Law concerning the Succeſſion, but that it ſtands ſtill as it did before that Statute was made, and as it was declared in the Caſe of *Edward* the Fourth, by which it was affirmed, That the *Henries*, the *Fourth Fifth*, and *Sixth*, were Kings only in Deed, and not of Right, and but pretended Kings, and that the Statute which ſetled the Crown upon *Henry* the Fourth and his Iſſue, was abſolutely void, againſt the Duke of *York* and his Heirs.

J. If this be all they had to ſay, I doubt

doubt not but to anſwer it well enough; and therefore as to their firſt Objection, which would make this Statute of *Henry* the VIIth. void, becauſe made by an Uſurper; methinks they might have been ſo civil as to have allowed him to be lawful King in Right of his Wife at leaſt; this Statute being made during the time of his marriage with the Princeſs *Elizabeth*, but indeed nothing more betrays theſe Gentlemens ignorance in our Laws; ſince if they will but look on any ordinary Statute Book, they will find that the Statutes of thoſe Kings they look upon as Uſurpers, are of as much force at this day, as thoſe enacted by Princes in a right line, unleſs it were ſuch as have been ſince Repeal'd by ſome ſubſequent Statutes. 2*dly*. Their Objection of its being a Temporary Law, only during that King's Life, is alſo as vain, ſince the Statute it ſelf mentions no ſuch thing; but ſpeaks of the King for the time being, in all ſucceeding times, without any mention of King *Henry* the VIIth. in particular. 3*dly*. That the Judges have lookt upon it as a void Law, or elſe Repeal'd it alſo as falſe; for the Caſe of the Duke of *Northumberland* does not prove it to be ſo; for though the Duke did not, as we can ever find,

plead

plead this Statute at his Trial, yet I think if he had, it would not have helpt him, ſince the King or Queen, for the time, being within this Statute, I only take to be he or ſhe that have been ſolemnly Crowned and Recognized by a free Parliament; or ſuch a one on whom the Crown is entail'd by Statute; which it never was on the Lady *Jane*, on whom the Crown was only beſtow'd by King *Edward* the VIth's Letters-Patents, and conſequently had no Title by Act of Parliament. And laſtly, that this Statute of 11th of *Henry* VIIth. was never Repeal'd by any ſubſequent Act, is likely as certain; for I never heard before, that any Act of Parliament could ever be Repeal'd by Implication, but only by expreſs words: But indeed, none of thoſe Statutes you mention have done it ſo much as by Implication; for though the Oaths of Allegiance, and Supremacy are to be taken to the King or Queen, and their Heirs, and Lawful Succeſſors; yet who thoſe Heirs or Lawful Succeſſors ſhall be, can only be known by ſome Law or other; now who can declare what this Law is, or ſhall be, but the King and Parliament the ſole Supream Legiſlators? And that this is Law at this day, appears by this undeniable Authority, that

that it is by the Statute of the 13th of *Elizabeth*, declared to be Treaſon, during 'the Life of the Queen, for any Perſon 'to affirm that the Queen and Parlia-'ment had not Power to make Laws, to 'limit, and bind, and govern the Suc-'ceſſion of the Crown, in Poſſeſſion, Re-'mainder, or Reverſion; (and to ſhew you 'that this Statute is ſtill in force) every 'Perſon ſo holding, or affirming after the 'ſaid Queen's Deceaſe, ſhall forfeit all their 'Lands, and Goods. But as for the Statute of *Henry* the VIIIth. that will help them leaſt of all; for it appears by the Statute it ſelf, that the Treaſon thereby Enacted, could only ariſe from thence, and extend no farther than the Perſons therein menti-on'd; nor is the Succeſſion of the Crown in a right line ſetled or confirmed by this Statute, but the clear contrary; ſince King *Henry* had Power by this Statute to bequeath the Crown by his laſt Will and Teſtament, under his Seal and Sign Manual; which he afterwards actu-ally took upon him to do; ſo that the Law ſtill continues as it did before that Act of *Edward* the IVth. you now mentioned was made, ſince it is declared by that un-printed Act of *Henry* the VIIth. I have now cited, that King *Henry* the VIth. was unjuſtly

unjuſtly depoſed, and his attainder reverſed, and conſequently his Right to the Crown is thereby declared to be good and valid to all intents and purpoſes.

F. I confeſs you have throughly convinced me in this matter, and I think it highly reaſonable that it ſhould be ſo; for how can we ordinary Subjects know to whom to pay our Allegiance, in caſes of any diſputes that may ariſe about the different Titles of Princes to the Crown, without appealing to ſome proper Judges of it; and who can theſe Judges be, but the great Council of the Nation, in which every perſon thereof is either perſonally preſent, or vertually repreſented? and if this were the effect of your late Charge at our Seſſions, I wonder any perſons ſhould be ſo malicious as to miſrepreſent you for a Commonwealthsman; but pray tell me what I ſhall ſay to thoſe Gentlemen if I happen to come again into their Company?

J. Pray aſſure them from me, that I am no more a Commonwealthsman, than themſelves, and am not only for keeping up and defending the Origi-

Original Conſtitution of King, Lords, and Commons, and the Rights and Liberties of the People; but am alſo for an Hereditary Monarchy by Lineal deſcent, by all thoſe lawful means by which our Anceſtors have maintained them, and that in all caſes; except where the exigency of our Affairs, and the neceſſity of providing for the Publick Peace and Safety of the Commonwealth, have not obliged the Eſtates of the Kingdom ſeveral times to take a different courſe when it could not be avoided without inevitable Ruin; and, I ſuppoſe, the ſame Eſtates have ſtill, by the very Conſtitution, the ſame Power and Right of Providing for the Peace and Safety of the Nation, and the Preſervation of our Religion, Liberties, and Properties, as ever they had in all precedent times: So that granting the moſt that can be ſaid, that the Convention have now exerciſed that ancient Power, in placing Their preſent Majeſties on the Throne; yet this would be no more an Argument for our making a common courſe of it upon every Succeſſion to the Crown, than it would be for you when you were a Travelling upon the Road to break into any bodies ground you pleaſed, becauſe you may have been forced

when

when the way has proved unpaſſable, either through Water or Dirt, to leap a Ditch (perhaps for ſafeguard of your life) into a Neighbour's Encloſure.

F. Sir, I am ſo well ſatisfied with what your Worſhip hath now ſaid in theſe grand Points, that, with your good leave, I ſhall not fail, not only to vindicate your Perſon from thoſe aſperſions, but alſo to maintain the lawfulneſs of our preſent Settlement upon the ſame Principle you have now laid down; ſince I know of none that ſeem to me more agreeable to Right Reaſon, and the Laws and Conſtitution of this Kingdom; and therefore I hope you will always believe me to be your honeſt Neighbour and humble Servant, and ſo I take my leave of your Worſhip.

J. Neighbour, I am yours, and bid you heartily farewel.

FINIS.

Books Sold by Richard Baldwin.

THE Works of *F. Rabelais*, M D. In Five Books; or the Lives, Heroick Deeds and Sayings of the Good *Gargantua* and *Pantagruel*, and his Voyage to the Oracle of the Bottle. As alſo his Hiſtorical Letters. To which is added, the Author's Life, and Explanatory Remarks. By Mr. *Motteux*. Never before Printed in *Engliſh*.

Bibliotheca Politica: Or an Enquiry into the Ancient Conſtitution of the *Engliſh* Government; with Reſpect both to the juſt Extent of Regal Power, and to the Rights and Liberties of the Subject. Wherein all the chief Arguments, as well againſt as for the Late Revolution, are Impartially repreſented and conſidered. In XIII. Dialogues. Collected out of the beſt Authors both Ancient and Modern. To which is added, An Alphabetical Index to the whole Work.

The remarkable Sayings, Apothegms and Maxims of the Eaſtern Nations, Abſtracted and Tranſlated out of their Books written in the *Arabian*, *Perſian*, and *Turkiſh* Language, with Remarks: by *Monſieur Galland*, who lived many Years in thoſe Countries. Tranſlated from the *Paris* Edition, into *Engliſh* Twelves, Printed for *Richard Baldwin*, near the *Oxford-Arms* in *Warwick-Lane*.

The World bewitch'd, (is now publiſh'd) containing an Examination of the common Opinions concerning *Spirits*, their Nature, Power, Adminiſtration, and Operations; as alſo the Effects men are able to produce by their Communication. Divided into Four parts. By *Belthazer Bekker*. D. D. and Paſtor at *Amſterdam*. Vol. I. Tranſlated from a *French* Copy, Approved of, and Subſcribed by the Author's own hand.

A New and Easie Method to understand the Roman History. With an exact Chronology of the Reign of the Emperors; An Account of the most Eminent Authors, when they flourish'd; And an Abridgment of the *Roman* Antiquities and Customs. By way of Dialogue, for the use of the Duke of *Burgundy*. Done out of *French*, with very large Additions and Amendments, by Mr. *Tho Brown*.

A Collection of Speeches of the Right Honourable *Henry* late Earl of *Warrington*, viz. I. His Speech upon his being sworn Mayor of *Chester*, in *November* 1691. II. His Speech to the Grand Jury at *Chester*, *April* 13. 1692. III. His Charge to the Grand Jury at the Quarter-Sessions held for the County of *Chester*, on the 11th. of *October*, 1692. IV. His Charge to the Grand Jury at the Quarter-Sessions held for the County of *Chester*, on the 25th. of *April*, 1693.

Letters of State, Written by Mr. *John Milton*, To most of the Sovereign Princes and Republicks of *Europe* From the Year 1649. till the Year 1659. To which is added, An Account of his Life. Together with several of his Poems; And a Catalogue of his Works, never before Printed.

Mathematical Magick: Or the Wonders that may be performed by Mechanical Geometry. In Two Books. Concerning *Mechanical Powers*, *Motions*. Being one of the most easie, pleasant, useful, (and yet most neglected) part of Mathematicks, not before treated of in this Language.

Mercury; or the Secret and Swift Messenger Shewing how a man may with privacy and speed communicate his Thoughts to a Friend at any distance. The Second Edition. By the Right Reverend Father in God, *John Wilkins*, late Lord Bishop of *Chester*. Printed for *Rich. Baldwin*, where are to be had, The World in the *Moon*.

England's

England's Intereſt; Or, a Diſcipline for Seamen: Wherein is propoſed, a Sure Method for Raiſing Qualified Seamen for the well Manning Their Majeſties Fleet on all Occaſions. Alſo a Method whereby Seamen will be obliged mutually to Relieve each other on board the Men of War yearly, or thereabout; except where any Seaman by his own voluntary Conſent ſhall be willing to ſtay longer. Likewiſe is ſhewed the Advantages which by theſe Methods will accrue to the Nation in general, and in particular to the Merchants and Seamen: For hereby the Wages now given in Merchant-Ships will be brought lower, and every Seaman will have the liberty of chuſing his own Commander, after the firſt year, and continuing with him, if he ſo likes. By Captain *George St. Lo.*

An Anſwer to a Paper written by Count *d'Avaux*, the *French* King's Ambaſſador in *Sueden*, concerning the Propoſals of Peace made by *France* to the Confederates.

An Eſſay concerning Obedience to the Supream Powers, and the Duty of Subjects in all Revolutions. With ſome Conſiderations touching the preſent Juncture of Affairs.

An Eſſay concerning the Laws of Nations, and the Rights of Sovereigns. With an Account of what was ſaid at the Council-board by the Civilians upon the Queſtion. Whether Their Majeſties Subjects taken at Sea acting by the Late King's Commiſſion might not be looked on as Pirates? With Reflections upon the Arguments of Sir *T. P.* and Dr. *Ol.* Both by *Matth. Tyndal*, Doctor of Laws. The Second Edition.

The Antiquity and Juſtice of an Oath of Abjuration. In anſwer to a Treatiſe, Entituled, The Caſe of an Oath of Abjuration conſidered.

A Sermon preached before the Right Honourable the Lord-Mayor, and the Court of Aldermen of the City of *London*, at St. *Mary-le-Bow*, on the

29th

29th of *May*, 1694. By *John Trenchard*, M.A Rector of *Wrexhall* in the County of *Somerſet*, and Chaplain to the Right Honourable the Earl of *Mancheſter*.

A Poem on the Late Promotions of ſeveral Eminent Perſons in Church and State. By *N. Nate*, Servant to Their Majeſties.

The Doctrine of the Holy Trinity placed in its due light, by an Anſwer to a late Book, Entituled, Animadverſions upon Dr. *Sherlock*'s Book, *&c.* Alſo the Doctrine of the Incarnation of our Lord aſſerted and explained.

Liturgia Tigurina: Or, the Book of Common-Prayer and Adminiſtration of the Sacraments, and other Eccleſiaſtical Rites and Ceremonies, uſually practiſed, and ſolemnly performed in all the Churches and Chappels of the City and Canton of *Zurick* in *Switzerland*, &c.

The Tragedies of the Laſt Age, conſider'd and examin'd by the Practice of the Ancients, and by the common ſenſe of all Ages; in a Letter to *Fleetwood Shepherd*, Eſq; Part I. The Second Edition.

A ſhort View of Tragedy; its Original, Excellency, and Corruption; with ſome Reflections on *Shakeſpear* and other Practitioners for the Stage. Both by Mr. *Rimer*, Servant to Their Majeſties.

A New, Plain, Short, and Compleat *French* and *Engliſh Grammar*; whereby the Learner may attain in few months to ſpeak and write *French* correctly, as they do now in the Court of *France*; and wherein all that is dark, ſuperfluous, and deficient in other *Grammars*, is plain, ſhort, and methodically ſupplied. Alſo very uſeful to Strangers that are deſirous to learn the *Engliſh* Tongue; for whoſe ſake is added a ſhort, but very exact *Engliſh Grammar*. The Third Edition, with Additions. By *Peter Berault*.

Truth brought to light; or the Hiſtory of the firſt 14 Years of King *James* I. In Four Parts, *&c.*

Travels into divers parts of *Europe* and *Aſia*, undertaken by the *French* King's order, to diſcover a new

new way by land into *China*; containing many curious Remarks in Natural Philosophy, Geography, Hydrography, and History. Together with a Description of *Great Tartary*, and of the different People who inhabit there. Done out of *French*. To which is added a Supplement extracted from *Hakluyt* and *Purchas*, giving an Account of several Journeys over Land from *Russia*, *Persia*, and the *Mogul*'s Country, to *China*, together with the Roads and distances of the Places.

Saul at *Endor*; or the Ghost of the Marquess *de Louvois* consulted by the *French* King, concerning the present Affairs. Done out of *French*.

An Answer to the late King *James*'s Declaration, dated at St. *Germains*, *April* the 7th. S. N. 1693. Licensed by Mr. Secretary *Trenchard*.

Reflections upon two Pamphlets lately published; one called, *A Letter from Monsieur* de Cross, *concerning the Memoirs of* Christendom; And the other, *An Answer to that Letter*; pretended to have been written by the Author of the said Memoirs. By a Lover of Truth.

A true and exact Account of the Retaking a Ship called, *The Friends Adventure of* Topsham, from the *French*, after she had been taken six days, and they were upon the Coasts of *France* with it four days; where one Englishman and a Boy set upon seven Frenchmen, killed two of them, took the other five Prisoners, and brought the Ship and them safe to *England*, &c.

A Project of a Descent upon *France*. By a Person of Quality.

A Compendious History of the Taxes of *France*, and of the Oppressive Methods of Raising of them.

An Impartial Enquiry into the Advantages and Losses that *England* hath received since the beginning of this Present War with *France*.

The Gentleman's Journal: Or the Monthly Miscellany. In a Letter to a Gentleman in the Country.

Country. Consisting of *News*, *History*, *Philosophy*, *Poetry*, *Musick*, *Translations*, &c. Sold by *R. Baldwin*, Where are to be had compleat Sets for the two last years, or single ones for every Month.

Nevil Pain's Letter, and some other Letters that concern the Subject of his Letter. With short Notes on them, for the clearer Information of the Members of Parliament, in order to *Nevil Pain's* Trial.

A True Relation of the Wonderful Cure of *Mary Maillard*, (lame almost ever since she was born) on *Sunday* the 26th of *November*, 1693. With the Affidavits and Certificates of the Girl, and several other Credible and Worthy Persons, who knew her before and since her being Cured. To which is added, a Letter from Dr. *Welwood* to the Right Honourable the Lady Mayoress, upon that Subject.

A Second Five years struggle against Popery and Tyranny: Being a Collection of Papers, Published by *Samuel Johnson*.

Remarks upon Dr. *Sherlock's* Book, Intituled the Case of Resistance.

Reflections on the History of Passive Obedience.

An *Argument* proving, that the Abrogation of King *James* by the People of *England* from the Regal Throne, and the Promotion of the Prince of *Orange*, one of the Royal Family, to the Throne of the Kingdom in his stead, was according to the Constitution of the English Government, and *Prescribed* by it. In Opposition to all the false and treacherous Hypotheses, of Usurpation, Conquest, Desertion, and of taking the Powers that *Are* upon Content.

An Essay concerning Parliaments at a certainty.

Notes upon the *Phœnix* Edition of the Pastoral Letters, par. 1.

These last Six Books, By Mr. *Samuel Johnson*.